March 21, 2025

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Constellation Response to Information Solicitation to Inform Implementation of California Climate Disclosure Legislation Senate Bills 253 and 261, as Amended by Senate Bill 219

Constellation Energy Corporation (Constellation) appreciates the opportunity to provide responses to the California Air Resources Board's (CARB) Information Solicitation relating to implementation of new California climate disclosure legislation, Senate Bills (SB) 253 and 261, as amended by SB 219.

Constellation is the nation's largest producer of reliable, clean, carbon-free energy and a leading supplier of energy products and services, including sustainable energy solutions to millions of homes, institutional customers, the public sector, community aggregations and businesses, including three fourths of Fortune 100 companies. Our generation fleet of nuclear, hydro, wind, and solar generation facilities powers more than 16 million homes and businesses, providing around 10 percent of all clean power on the grid in the U.S. All told, our fleet is helping to accelerate the nation's transition to clean energy with more than 32,400 megawatts of capacity and annual output that is nearly 90 percent carbon-free.

Constellation is helping customers reach their own sustainability goals through innovative clean energy solutions, including an hourly carbon-free energy matching product. Constellation is also an experienced power marketer serving competitive energy markets throughout the United States. Constellation provides wholesale and retail electric services and energy solutions to utilities, municipalities, cooperatives, retailers, residential, small business, commercial, and industrial customers. Constellation's comments are informed by its unique perspective as both a clean energy producer and a clean energy solutions provider. Constellation is aware of the challenges pending in the courts to the legal requirements that were enacted by SB 253 and SB 261 and modified by SB 219. Considering that uncertainty, Constellation reserves the right to modify its positions on matters addressed in these responses, as appropriate. The following are Constellation's responses to certain of the questions in CARB's Information Solicitation:

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?**

    CARB should not adopt the definition of "doing business" found in the Revenue and Tax Code (Tax Code) section 23101, CA Rev & Tax Code § 23101 (2020). The definition of "doing business" in Tax Code section 23101 is overly broad and extends beyond the intended scope of the legislation. Under this section of the Tax Code, an entity is "doing business" in California if any of several conditions are satisfied, including, for example, if an entity paid compensation of $50,000 or more to an employee in California, regardless of whether the entity had any actual sales or revenue generated in California that year. See Tax Code Section 23101(b)(4), CA Rev & Tax Code § 23101(b)(4) (2020). Moreover, from an administrative perspective, the scale of reporting entities captured under the general definition of "doing business" in the Tax Code would create a significant administrative burden in evaluating such a large volume of Scope 3 emission reporting data efficiently or effectively.

    Constellation recommends adopting a definition of "doing business" in California that aligns with Tax Code Section 23101(b)(2), CA Rev & Tax Code § 23101(b)(2) (2020). Under Tax Code Section 23101(b)(2), a taxpayer is "doing business" in California for a taxable year if its

    > "[s]ales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars ($500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under Section 25137."

    Constellation's proposed definition of "doing business" will ensure that entities who meaningfully do business in California will be subject to CARB's jurisdiction. This definition will prevent an expanded scope of the regulatory jurisdiction beyond what was contemplated in SB 253 and SB 261 and will help minimize the administrative burden and cost of complying with the new disclosure requirements.

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

Constellation takes no position on this question.

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

Yes, assuming such entities are among those that have access to California's market as a result of their corporate franchise in the state. (See, e.g., SB 253, Section 1(f).) It is not clear that the definitions of "reporting entity" and "covered entity" would include foreign government ownership, unless any entities owned wholly or in part by a foreign government are formed under the laws of a state or the United States.

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?**

CARB should minimize the reporting requirements for entities whose primary business in California is participating in wholesale energy markets. CARB has already developed substantial and vetted reporting protocols for electricity imports under the Mandatory Greenhouse Gas Reporting Regulation (MRR).

Load-serving entities are also subject to the California Energy Commission's Power Source Disclosure regulations which account for both domestic and import sales and their associated GHG emissions on an annual basis. The Power Source Disclosure program also requires public GHG disclosure, in the form of a Power Content Label, which serves the same policy objectives of SB 261. CARB should refrain from creating duplicative and potentially conflicting GHG reporting requirements for participation in California's wholesale electricity markets because these emissions are already publicly available from the Power Source Disclosure program.

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)?**

   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?**

   City and county business licenses and Secretary of State registrations would be useful in identifying reporting entities. Business licenses must be renewed annually, and Secretary of State registrations annually or every two years.

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?**

In general, Constellation recommends that the entity "doing business" in California should be the entity responsible for complying with reporting requirements. CARB should allow entities to consolidate reports at the parent company level, as contemplated in Section 38533 of the Health and Safety Code, CA HSC § 38533.

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?**

   CARB should require that companies utilize the standards identified in SB 253 and SB 261, Greenhouse Gas Protocol (GHG Protocol) and Task Force for Climate Related Financial Disclosures (TCFD) to allow for consistent and comparable reporting. These standards are utilized by most companies reporting their greenhouse gas emissions or climate related risks. As these standards are updated or revised the updated standards should become the new reporting standard for SB 253 and 261.

   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?**

   Constellation supports implementing SB 253 and 261 in a manner that avoids or minimizes duplication. To that end, Constellation recommends that CARB allow reporting entities to submit disclosures that are aligned with other major reporting standards. For example, certain International Sustainability Standards Board disclosure standards (*e.g.*, Carbon Disclosure Project reporting) require reporting information also sought by SB 253 and 261. Enabling reporting entities to use other relevant required disclosures for SB 253 and 261 reporting will avoid burdensome, duplicative and costly reporting, while still ensuring disclosure goals are met.

   In addition, Constellation supports CARB certifying certain major reporting standards as part of the stakeholder process to provide clarity and certainty for reporting entities. Providing a select list of approved major reporting standards would also enable competition between the approved reporting standards in terms of accuracy and ease of using the reporting platform and could help minimize compliance costs for reporting entities.

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?**

Constellation recommends that reporting companies adapt their reporting methods to best practice as GHG accounting and climate reporting are rapidly evolving fields. However, in the year of transition where a reporting company is changing its reporting method, it should be required to report numbers for the prior year and reporting year under both methods, before fully transitioning to the new method to enable direct comparison between methods. In addition, if a reporting company has a baseline year from which it has set targets or measures progress in emissions reductions, Constellation recommends that CARB require baseline recalculation to ensure any reporting on target progress is based on a consistently applied methodology between the baseline year and reporting year.

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?**

   Constellation takes no position on this question.

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

   Constellation takes no position on this question.

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

   Constellation takes no position on 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?

While part of the GHG Protocol's success has been its flexibility, CARB has an important opportunity to standardize key aspects of emissions reporting that will promote best practices, maximize climate impact, and ensure compatibility with other clean energy programs and frameworks. Specifically, CARB should consider standardizing market-based accounting for Scope 2 reporting that requires:

Hourly accounting: CARB should adopt a reporting standard based on hourly time-matching using time-stamped granular certificates and hourly emission rates. Where hourly data is not available for procured generation and/or consumption, companies should rely on the most detailed available data to create credible hourly estimates. Hourly weighting factors for generation should include basic considerations such as time-of-day, month/season, location, technology type, and resource class, if applicable. Similarly, the distribution of average loads to an hourly estimate should rely to the greatest extent possible on consumption patterns that reflect actual use (facility type, sector, etc.) for the time, day, and month/season they occur, as opposed to generic system load shapes. Connecting clean energy supply with actual consumption patterns is important for the credibility and effectiveness of the program – particularly in preventing reporting entities from claiming Scope 2 emission reductions that result from applying an oversupply of clean power that exceeds load in one period to consumption in an entirely different period.

Market boundaries based on physical delivery of power: Credible claims to the use of a low- or zero-emission rate electricity source should be predicated on feasible delivery of that electricity within a market area coordinated by a single operating entity (e.g., independent system operators). The existence of price separation within the sub-regions of any such market area does not preclude the feasible delivery of electricity throughout the broader market region. Coupled with hourly accounting, establishing market boundaries based on the physical delivery of power encourages the deployment of carbon-free energy sources when and where they are needed most.

Fair allocation of clean energy resources: Any Scope 2 market-based calculation should feature the fair allocation of clean energy resources to harmonize procurement and maximize the impact of clean energy investment. In this context, 'fair allocation' simply means that clean energy attributes should only be granted to those who have supported its deployment and/or continued operation – through standard supply service or the voluntary market. For standard supply service – sometimes referred to as 'mandatory' procurement – clean energy should be claimable as a pro rata share of load via a supplier-specific emission rate and includes:

- Clean energy resources subject to regulated cost recovery from a monopoly supplier in a particular service area that are not part of a resource-specific supplier product (e.g. a green tariff).

- A competitive or regulated supplier complying with a government-mandated clean energy procurement program. This includes Renewable Portfolio Standards (RPS), Clean Energy Standards (CES), and nuclear-support programs applicable to serving load within a state. While there are a variety of generation technologies supported by these programs, the eligibility of clean energy resources would continue to be determined by Scope 2 quality criteria.

- Publicly owned facilities where the majority owner is a government.

If a company chooses not to exercise the option to claim their share of energy and associated emission rates from standard supply service, that share is ineligible for claims in the market-based inventories of other companies, meaning contractual instruments from standard supply service procured via resale of attributes, transfer, or concentrated allocation would be ineligible for Scope 2 reporting.

Prioritizing the use of non-baseload or fossil emission factors over an average value: The use of regional grid average emission factors for Scope 2 market-based reporting would undoubtedly lead to double counting of clean energy due to the presence of untracked and/or unclaimed clean energy in the average rates. The use of regional non-baseload or fossil generation emission factors (ideally consistent with the market boundaries defined for the physical delivery of power) would mitigate, if not fully eliminate, this double counting while better representing the expected grid response to changes in load and supporting the fair allocation of clean energy resources.

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?**

      There are a wide variety of third-party providers; Constellation currently uses LRQA as its assurance provider for scopes 1, 2, and 3 emissions. While accreditations and experience have their place in the selection process, we would encourage CARB to provide reporting companies with the maximum amount of flexibility in choosing an assurance provider. CARB should also provide an approved list of vetted vendors for reporting entities to use to ensure transparency and reduce risk of non-compliance.

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" in MRR be utilized, and if not why?**

California's Mandatory Reporting Regulation (MRR) is designed for a level of rigor that exceeds what is necessary for implementing SB 253 and could prove burdensome to reporting entities. Existing assurance standards (e.g., ISO 14064) – which many entities already rely on for climate disclosures – are more appropriate standards for defining limited assurance and reasonable level of assurance. Further, CARB should be careful to reinforce the distinction between financial data and non-financial data assurance and verification in its definitions and requirements. Definitions that are related to financial accounting and financial data assurance, including those in the AICPA, should not be used for GHG accounting disclosures. For GHG data reporting, CARB should emphasize that assurance relates to existing definitions from prevailing assurance standards for non-financial data only, preserving the flexibility of reporting entities to choose the best assurance provider for their circumstance.

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?**

Constellation currently reports Scope 1 and 2 GHG emissions on an annual basis.

d. **When are data available from the prior year to support reporting?**

Typically, Constellation's annual GHG inventory is available for the prior year when we issue our annual sustainability report in July, so 2024 GHG emissions data will be publicly available by July 2025.

e. **What software systems are commonly used for voluntary reporting?**

Constellation uses two software systems for GHG accounting and reporting functionalities: Persefoni Climate Management and Accounting Platform (CMAP) for GHG accounting and Workiva ESG for GHG reporting.

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?**

Reporting entities should have the flexibility to report the prior year's data whenever it is available, but no later than December 31st of the following year. Additionally, SB 261 does not require assurance review and Constellation does not recommend that CARB consider including this requirement as part of SB 261 implementation.

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.)?**

    CARB should require a standardized reporting year to facilitate consistency and comparability across entities

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?**

    Constellation takes no position on 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?**

       Many companies are already reporting their climate related financial risks using the TCFD framework, which has recently been absorbed into the International Sustainability Standards Board (ISSB) International Financial Reporting Standards 2 – Climate-related disclosures (IFRS S2) framework. As such, reporting requirements should be compatible with this widely used framework to allow companies to fulfill their reporting requirements through a TCFD/IFRS S2 aligned report. Additionally, some multi-national organizations are preparing to comply with the European Union's Corporate Sustainability Reporting Directive (CSRD), which has a climate related financial disclosure component. While there may be changes to compliance obligations due to the new omni-bus rule, which is currently being considered in the EU. Constellation believes that CARB should take into consideration current and future compliance obligations when finalizing a rule on climate risk reporting requirements for California.

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

       Entities use the TCFD/IFRS S2.

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?

Typical U.S.-based voluntary reporting may not be significantly different from TCFD guidance; however, as some companies prepare for compliance with CSRD, there is a difference in the level of detail required for mitigation and financial quantification of climate-related risks in the current version of CSRD. Given that current California law references TCFD, we would encourage CARB to maintain consistency with current law by avoiding the quantification of risk and discussions of mitigation plans.

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?

We recommend CARB closely follow TCFD/IFRS S2 guidelines, particularly as requirements may change as a result of the omnibus rule that was recently passed by the EU Commission.

In conclusion, Constellation appreciates the opportunity to share our knowledge and thoughts on the future implementation of California Climate Disclosure Legislation.

Respectfully Submitted,

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