



**Avista Corporation, Idaho Power Company, Portland General Electric, and
Puget Sound Energy's Comments on CARB's Information Solicitation to Inform
Implementation of California Climate-Disclosure Legislation**

March 21, 2025

Ms. Liane Randolph
Chair
California Air Resources Board
1011 I Street, Sacramento, CA 95814

Dear Chair Randolph,

Avista Corporation, Idaho Power Company, Portland General Electric, and Puget Sound Energy ("Northwest Utilities") submit the following comments in response to the issuance by the California Air Resources Board ("CARB") of its *Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219* ("RFI").¹ The Northwest Utilities write to provide CARB guidance in ensuring regulations promulgated to implement SB 253 and 261 do not inadvertently regulate them, as these utilities are neither located in nor generate emissions within California.

Avista Utilities, Avista Corporation's operating division, provides electricity to 418,000 customers and natural gas to about 382,000 customers across 30,000 square miles of Washington, Oregon, Idaho, and Montana. Alaska Energy and Resources Company, an Avista subsidiary, provides retail electric service in the city and borough of Juneau through its subsidiary, Alaska Electric Light and Power Company.

Idaho Power Company is an electric utility headquartered in Boise, Idaho and serves 650,000 customers in a 24,000-square-mile service area in Idaho and Oregon.

Portland General Electric is an electric utility that serves approximately 950,000 customers with a service area of 4,000 square miles across seven counties and 51 cities.

Puget Sound Energy is Washington state's oldest local energy company. It serves approximately 1.1 million electric customers and nearly 840,000 natural gas customers in 10 counties within the state.

In the RFI, CARB seeks feedback regarding, among other topics, how to define an entity that "does business in California" under SB 253 and SB 261.² To ensure that CARB receives the

¹ CARB, *Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219*, (Dec. 16, 2024), https://ww2.arb.ca.gov/sites/default/files/2025-01/ClimateDisclosureQs_Dec2024_v2.pdf.

² See RFI, pg. 2, Question 1.

most relevant information regarding greenhouse gas emissions and climate risks regarding California, the Northwest Utilities recommend that CARB’s SB 253 and 261 regulations: (A) exclude entities that engage in wholesale electricity and energy-related transactions (“Wholesale Electricity Transactions”)³ with California entities but are not physically located within California; and (B) exclude out-of-state companies with a de minimis number of employees working in California.

A. Out-of-state entities that engage in wholesale electricity and RECs transactions with California entities should not be covered.

The Northwest Utilities strongly advocate that out-of-state companies that engage in Wholesale Electricity Transactions with California entities should not be included in the definition of “doing business in California” under regulations implementing SB 253 and SB 261 for six reasons.

First, regarding Wholesale Electricity Transactions that occur within interstate commerce through organizations such as the Western Energy Imbalance Market (“EIM”) and the Extended Day Ahead Market (“EDAM”), the lead sponsors of both bills, Senator Wiener and Senator Stern, published a letter in the Senate Journal clarifying that it was not the “legislative intent to include such energy transactions within the scope of this reporting obligation” under SB 253 and 261.⁴ This provides a clear legislative instruction to CARB to exclude EIM and EDAM Wholesale Electricity Transactions from reporting obligations. The Northwest Utilities advocate that this exclusion not only applies to transactions within EIM and EDAM, but also to all Wholesale Energy Transactions within the CAISO market.

Second, CARB should implement its regulations in a manner that covers only entities that directly own and operate generating resources that emit within California. Specifically, Cal. Health and Saf. Code § 38530 states: “(b) The regulations shall do all of the following: . . . (1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to *statewide* emissions.”⁵ Additionally, the Legislature declared in SB 253 that “United States companies that have access to California’s tremendously valuable consumer market *by virtue of exercising their corporate franchise in the state* also share responsibility for disclosing their contributions to global GHG emissions.”⁶ This indicates that CARB’s regulations must focus on entities that generate emissions within California rather than out-of-state entities that do not generate emissions within the state. To this end, the California Revenue and Tax Code’s definition of “doing business

³ Such energy-related transactions include, but are not limited to, the purchase and sale of renewable energy credits, congestion revenue rights, California carbon allowances, and California Intertie bidding.

⁴ California Legislature 2023-24, Senate Daily Journal, 3058, (Jan. 30, 2024), <https://leginfo.legislature.ca.gov/faces/pubSenDailyJrn2.xhtml?type=doc&sessionyear=20232024&pagenum=3057&sessionnum=0&fileid=996>.

⁵ Emphasis added.

⁶ SB 253, § 1 (emphasis added).

in California”⁷ should not be adopted, as this definition was not intended to apply in the context of statewide greenhouse gas emissions or corresponding climate-related risks and is thus overly broad.

Third, given that Wholesale Electricity Transactions are interstate transactions, to the extent that such transactions regard California, these sales can be conceived of as the electricity and associated attributes generated by the out-of-state entity being sent over the interstate border to purchasers in California who take ownership of the electricity and associated attributes in California. Based on a plain language interpretation of “doing business in California,” sending electricity and associated attributes over an interstate border and transferring ownership to a California entity is not doing business within the state of the importing entity. Additionally, many Wholesale Electricity Transactions, such as many EIM transactions, are not sent across California’s border at all and do not occur in the state.

Fourth, all the Northwest Utilities serve jurisdictions such as Oregon and Washington that have greenhouse gas emissions cap programs and reporting regulations. Imposing duplicative reporting requirements on these companies will only cost CARB additional resources without advancing climate goals. CARB has a statutory duty to avoid such duplicative regulations.⁸ To the extent CARB is concerned about the potential emissions associated with imported electricity, such emissions are already accounted for under California’s cap-and-trade program.⁹

Fifth, subjecting out-of-state companies to substantial reporting burdens just for helping balance California’s electric grid would disincentivize companies from engaging in such transactions in the future. CARB should strive to avoid disincentives to electricity reliability in California, especially in light of the North American Reliability Corporation’s *2024 Long-Term Reliability Assessment*, which highlights future reliability concerns in future years due to a combination of demand growth and planned generator retirements.¹⁰ Furthermore, creating such disincentives could hinder California’s goal of electrifying the transportation sector, including

⁷ Cal. Rev. & Tax. Code § 2310.

⁸ See Cal. Gov’t Code § 11349(f) (“‘Nonduplication’ means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.”).

⁹ See Cal. Code Regs. tit. 17, § 95852(b)(1).

¹⁰ North American Electric Reliability Corporation, *2024 Long-Term Reliability Assessment*, 17 (Dec. 2024),

https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf.

Executive Order N-79-20's target of 100% in-state sales of new passenger cars and trucks being zero-emission by 2035,¹¹ as well as the electrifying other sectors, such as buildings.¹²

Finally, subjecting out-of-state companies to substantial reporting burdens for activities outside of California could be subject to legal challenges. Under the Due Process Clause of the U.S. Constitution, such requirements would be out of proportion to the out-of-state company's connection with California.¹³ Similarly, under the Commerce Clause, such requirements would have the impermissible practical effect of regulating activities wholly outside of California's borders by requiring the disclosure of non-California activity.¹⁴ Additionally, SB 253 and SB 261 may violate the First Amendment by compelling speech, as alleged in *Chamber of Commerce of the United States v. California Air Resources Board*, Case No. 2:24-cv-00801-ODW (C.D. Cal.). Excluding out-of-state electric utilities that do not generate emissions in California will help avoid these potential legal issues.

B. Out-of-state companies that have a de minimis number of employees working in California should not be covered.

In defining an entity that “does business in California” under SB 253 and 261, whether the Revenue & Tax Code is incorporated by reference or not, CARB should also exclude from coverage out-of-state companies that have a de minimis number of employees working in California. The Northwest Utilities recommend that CARB exclude from coverage companies that have 1% or less of their employees whose primary residence is in California. The greenhouse gas emissions of such employees are generally immaterial to the companies' operations.

Relatedly, employees working remotely has become increasingly common since the COVID-19 pandemic. Regarding the utility sector specifically, the U.S. Census Bureau found that in 2019, only 2.9% of utility employees worked remotely, whereas in 2021, this number rose to 24.2% before decreasing slightly to 16.5% in 2022—a drastic increase from pre-pandemic

¹¹ CARB, *Going Zero: Leading the Way to Zero-Emission Drive*, <https://ww2.arb.ca.gov/going-zero> (last visited Mar. 17, 2025).

¹² CARB, *Building Decarbonization*, <https://www.energy.ca.gov/programs-and-topics/topics/building-decarbonization> (last visited Mar. 17, 2025).

¹³ See *Allied-Signal, Inc. v. Dir., Div. of Tax'n*, 504 U.S. 768, 777 (1992) (“The principle that a State may not tax value earned outside its borders rests on the fundamental requirement of both the Due Process and Commerce Clauses that there be ‘some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.’”) (quoting *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 344–345 (1954)).

¹⁴ See *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 332 (1989) (“[A] state law that has the ‘practical effect’ of regulating commerce occurring wholly outside that State’s borders is invalid under the Commerce Clause.”).

numbers.¹⁵ As such, remote employees should not be included when calculating the 1% or less de minimis threshold for out-of-state companies with employees in California.

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The Northwest Utilities appreciate the opportunity to comment on CARB's implementation of SB 253 and 261. If you have any questions, please reach out to Greg Hesler at greg.hesler@avistacorp.com, Julia Hilton at jhilton@iadhpower.com, Angelica Espinosa at angelica.espinosa@pgn.com, or Lorna Luebbe at lorna.luebbe@pse.com.

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¹⁵ Sabrina Wulff Pabilonia and Jill Janocha Redmond, *The rise in remote work since the pandemic and its impact on productivity*, U.S. Bureau of Labor Statistics, Beyond the Numbers: Productivity, vol. 13, no. 8 (Oct. 2024), <https://www.bls.gov/opub/btn/volume-13/remote-work-productivity.htm>.