



915 L Street., Suite 1210
Sacramento, CA 95814
(916) 326-5800
CMUA.org

March 21, 2025

California Air Resources Board
1001 I Street
Sacramento, California 95814

RE: Comments in Response to Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills (SB) 253 and 261

The California Municipal Utilities Association¹ (CMUA) appreciates the opportunity to provide comments to the California Air Resources Board (CARB) in response to the *Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219* (“Information Solicitation”), released on December 16, 2024.

CMUA is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA’s member agencies are governed by locally elected boards that are committed to providing reliable and affordable utility services in a manner that supports the state’s climate goals.

In these comments, CMUA recommends that CARB do the following with regards to implementing SB 253 and 261:

- expressly acknowledge that a governmental entity is not a “reporting entity” as defined in Health and Safety (H&S) Code § 38532(b)(2) and is therefore not subject to the reporting requirements of the Climate Corporate Data Accountability Act²;
- expressly acknowledge that a governmental entity is not a “covered entity” as defined in H&S Code § 38533(a)(4), and is therefore not subject to the climate-related financial risk reporting requirements of H&S Code § 38533³; and
- utilize the existing greenhouse gas (GHG) emission reporting already provided by electric utilities if necessary to support the SB 253 and SB 261 reporting by private entities who are subject to those requirements, rather than creating new reporting requirements for electric utilities.

¹ The California Municipal Utilities Association is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes publicly owned electric utilities that operate electric distribution and transmission systems. In total, CMUA members provide approximately 25 percent of the electric load in California.

² Cal. Health & Safety Code § 38532.

³ Cal. Health & Safety Code § 38533.

I. RESPONSES TO INFORMATION SOLICITATION QUESTIONS

The Information Solicitation poses several questions relating to the implementation of climate related disclosures under SB 253 and 261. Below, CMUA responds to question 1.b. and provides general feedback on CARB’s implementation.

A. Governmental Entities are not “Reporting Entities” Under SB 253 or “Covered Entities” Under SB 261.

Senate Bill (SB) 253 (stats. 2023) created the Climate Corporate Data Accountability Act, which directs CARB to develop regulations that require every “reporting entity” to annually report its Scope 1, Scope 2, and Scope 3 emissions. For purposes of these SB 253 reporting requirements, a “reporting entity” is defined as:

a partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion dollars (\$1,000,000,000) and that does business in California. Applicability shall be determined based on the reporting entity's revenue for the prior fiscal year.⁴

SB 261 (stats. 2023) added H&S Code § 38533, which requires every “covered entity” to prepare and make public a climate-related financial risk report on a biennial basis. For purposes of the SB 261 requirements, a “covered entity” is defined as:

a corporation, partnership, limited liability company, or other business entity formed under the laws of the state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of five hundred million United States dollars (\$500,000,000) and that does business in California. Applicability shall be determined based on the business entity’s revenue for the prior fiscal year. “Covered entity” does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state.⁵

Under these definitions, any entity that is not a “partnership, corporation, limited liability company, or other business entity” is not subject to the SB 253 or SB 261 reporting requirements. Under the common and widely understood usage, the terms “partnership,” “corporation,” and “limited liability company” do not refer to public agencies. Question 1.b. of

⁴ Cal. Health & Safety Code § 38532(b)(2).

⁵ Cal. Health & Safety Code § 38533(a)(4).

the Information Solicitation seeks input on whether the remaining term “business entity” could be interpreted to include “federal and state government entities.”⁶

As described further below, the term “business entity” clearly does not include government or public agencies and should not be interpreted as such. Therefore, the reporting requirements of SB 253 and 261 are inapplicable to publicly owned electric and water utilities.

1. The Traditional and Commonly Understood Definition of “Business Entity” does not Include Public Agencies.

Though the term “business entity” is not expressly defined within the applicable division of the H&S Code, it is widely used elsewhere in California law, and nearly always refers to private enterprises.

In helping to determine the meaning of an undefined term, courts may also look to “similar terms used in related statutes.”⁷ It is therefore relevant to review how the term “business entity” is defined and used in other statutes. First, “business entity” is expressly defined within a different division of the H&S Code. H&S Code section 25179(c) defines a “business entity” as “any private organization or enterprise operated for profit, including, but not limited to, a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation, or association.” This definition does not list governmental entities, and governmental entities are not operated for profit.

Further, the term “business entity” is commonly defined outside of the H&S Code to exclude governmental entities. Some examples include:

- **Revenue and Tax Code § 18621.10(b)(2):** “Business entity” means a corporation, including an “S” corporation, an organization exempt from tax pursuant to Chapter 4 (commencing with Section 23701) of Part 11, a partnership, or a limited liability company.
- **Government Code § 5975(c):** “Business entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, engineering, financial, operations, management, facilities maintenance, and other services for development of a new Long Beach Civic Center.
- **Corporations Code § 5063.5:** “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16

⁶ Information Solicitation at 2 (“Should federal and state government entities that generate revenue be included in the definition of a “business entity” that “does business in California?”).

⁷ *Mercer v. Dep’t of Motor Vehicles*, 53 Cal. 3d 753, 763–64 (1991).

(commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code.

- **Civil Code § 1799(b):** The term “business entity” means a sole proprietorship, partnership, corporation, association or other group, however organized and whether or not organized to operate at a profit, but does not mean a financial institution organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans or extend credit and subject to supervision by an official or agency of this state or the United States, nor the parent of any such financial institution, nor any subsidiary of any such financial institution or parent.
- **Government Code § 82005:** “business entity” means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.”

As these examples clearly demonstrate, the common and traditional meaning of the term “business entity” is a privately-owned, for-profit entity. Public entities, including publicly owned utilities (POUs) – those owned by municipalities or other government entities – do not operate for profit and are instead structured to serve the public interest. Therefore, under this commonly understood definition, public entities are not “business entities.”

Moreover, when the Legislature does intend for a requirement to apply to both private entities and public entities, it states so expressly. In cases where the term “business entity” is used, the Legislation will include a separate term for governmental entities when that is their intent. For example, Civil Code section 3269(d) defines a “person” as “any individual, corporation, partnership, business entity, joint venture, association, the State of California or any of its subdivisions, or any other organization, or any combination thereof.” Similarly, Water Code section 12899(c) defines a “person” as “any person, firm, partnership, association, corporation, other business entity, nonprofit organization, or governmental entity.” If the term “business entity” was commonly understood to include public agencies, then the additions of the “State and its subdivisions” and of “governmental entity” would have been superfluous. These code sections demonstrate that when the Legislature intends to expand the scope of a requirement to public agencies, they do so expressly and do not rely on the term “business entity” to do so. Each of CMUA’s members is a public agency that should not be considered a “reporting entity” or “covered entity” as described in the Senate Bills.

2. The Legislative History of SB 253 and SB 261 Focus on Private Sector Accountability.

The legislative histories of SB 253 and SB 261 focus on private-sector accountability, especially for large corporations with significant emissions or climate-related financial exposure. For example, the author of SB 253, which was named the “Climate Corporate Data Accountability Act,” stated the following regarding the bill’s purpose: “We no longer have the time to rely on massive corporations to voluntarily report their emissions ... [SB 253] will allow for consumers to make informed decisions regarding their patronage of these corporations, and will give policymakers the specific data required to significantly decrease corporate emissions.”⁸

There is no indication in the bills’ history that the Legislature intended to regulate public agencies, POUs, or municipal utilities under these statutes. Furthermore, imposing either reporting or risk disclosure obligations on public entities would ordinarily constitute a state-mandated local program. Neither the Legislative Counsel’s Digest keys nor the text of either bill signal that a state-mandated local program was contemplated or intended, suggesting that these bills were not intended to apply to public entities.⁹ CARB should align its implementation with this legislative intent and exclude public entities from the scope of regulation. Ultimately, expanding applicability to governmental entities would require explicit statutory direction.

B. Utilize Existing Reporting Where Feasible to Minimize Reporting Burden.

1. CARB Should Rely on Existing Reports, and Not Require New Reporting by Electric Utilities to Support Reporting by Entities Subject to SB 253 and 261.

POUs already comply with extensive GHG emissions tracking and reporting obligations under existing regulations from CARB and the California Energy Commission (CEC). These reporting requirements include CARB’s Mandatory Reporting Regulation (MRR), as well as GHG emission reporting as part of the Power Source Disclosure (PSD) Program overseen by the CEC. These existing reports contain detailed electricity GHG emissions calculations, energy procurement records, and the electricity product GHG intensity factor that is provided to customers on the Power Content Label. To the extent that reporting and covered entities that must comply with SB 253 and SB 261 will need the GHG emissions data associated with the electricity they consume, CARB should utilize these existing reports to support those data needs and avoid imposing any new reporting burdens on electric utilities.

⁸ Senate Judiciary Committee, Hearing on SB 253 (Wiener), April 18, 2023 at 7.

⁹ Compare SB 251, Cal. Stats. 2023, ch. 382 (key stating “Local Program: no” and not including bill language addressing state-mandated local programs), and SB 261, Cal. Stats. 2023, ch. 383 (same), with SB 1158, Cal. Stats. 2022, ch. 367 (key stating “Local Program: yes” and Section 4 addressing state-mandated local program issues).

II. CONCLUSION

The POUs are keenly aware of the upward pressure that various regulations place on electricity rates and want to ensure that additional costs and regulatory burdens are avoided to the greatest extent possible. CMUA believes that the provisions of SB 253 and SB 261 can be carried out without further burdening the electric utilities, and encourages CARB to ensure that the regulations reflect this. CMUA appreciates the opportunity to provide these comments to implement SB 253 and SB 261 requiring business entities to report GHG emissions and climate related financial risks.

Respectfully submitted,

/s/ Justin Wynne

Justin Wynne
Braun Blaising and Wynne, P.C.
555 Capitol Mall, Suite 570
Sacramento, CA 95814
wynne@braunlegal.com

/s/ Jen-Ann Lee

Jen-Ann Lee
Braun Blaising and Wynne, P.C.
555 Capitol Mall, Suite 570
Sacramento, CA 95814
lee@braunlegal.com

Counsel for the California Municipal
Utilities Association