March 21, 2025

SUBMITTED ONLINE VIA PUBLIC COMMENTS TO CALIFORNIA CLIMATE-DISCLOSURE INFORMATION SOLICITATION

California Air Resources Board (CARB)
1001 I Street
Sacramento, CA 95814

Re: Comments in Response to Information Solicitation to Inform Implementation of California Climate Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219

Dear CARB Staff:

Thank you for this opportunity to comment on the implementation of Senate Bill ("SB") 253 and 261, the California Climate Disclosure Legislation. DTE Energy ("DTE") is a Detroit-based diversified energy company involved in the development and management of energy-related businesses and services nationwide. The DTE portfolio also includes non-utility businesses focused on industrial energy services, renewable natural gas, and energy marketing and trading. DTE appreciates the opportunity to submit these comments to the California Air Resources Board ("CARB") on SB 253 and 261.

The below comments are intended to clarify the scope and regulatory scheme for SB 253 and 261 and, therefore, enhance compliance and better meet the State of California's goals in implementing these new laws. DTE urges the CARB to implement the below recommendations to provide clarity to companies on whether they are subject to SB 253 and 261 and, if so, the scope and timing of related reporting. SB 253 and 261 impose significant requirements on companies conducting business in California and further clarification is needed to ensure compliance. DTE's comments are provided below following CARB's questions in *italics*.

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?*

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Yes, in part. CARB should adopt the interpretation of "doing business in California" found in the Revenue and Tax Code Section 23101, subsection (b), which provides certain and quantitative metrics for potentially regulated entities to evaluate. CARB should not adopt the definition in Section 23101, subsection (a), which states, "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit," as it does not provide certainty for potentially regulated entities. Given the burden imposed by the reporting laws, particularly as it relates to Scope 3 reporting, entities must have measurable standards to evaluate the applicability of these laws. Revenue and Tax Code Section 23101, subsection (b) provides a clear, established legal framework that, unlike subsection (a) or other qualitative definitions, reduces confusion.

DTE relatedly encourages CARB to adopt clarifications concerning how "annual revenue" is measured for these laws and how it should be applied to companies with complex structures consisting of subsidiaries and affiliate entities. Incorporation of the Taxation and Revenue Code's definition of "doing business" into the laws may generate unwanted complexity as it relates to how "revenue" is evaluated. For simplicity and ease of application for both CARB and regulated entities, CARB should apply the two applicability thresholds (i.e., whether an entity is "doing business" in California and meets the applicable revenue threshold) to each individual company, regardless of whether such revenue is reported as part of a consolidated tax return. To this end, the revenue of subsidiaries should not be attributable to parent companies regardless of whether the subsidiary's income is attributed to the parent for purposes of the Tax Code.

Aggregation of revenue at the subsidiary level only will generate further ambiguity as regulated entities determine which subsidiary's revenue is attributable to the parent. Moreover, aggregating revenue at the parent corporation level could unfairly subject smaller entities to the same reporting requirements as billion-dollar companies. By examining revenue at the entity level, only those entities that individually meet the revenue threshold would be required to comply with SB 253 and SB 261. This approach prevents smaller entities from facing undue compliance burdens that may be disproportionate to their size and resources. Subsidiaries and parents that individually meet the applicability requirements may consolidate their reporting as the laws presently allow.

Finally, DTE recommends that CARB adopt a *de minimis* threshold consistent with the definition of "covered entity" in CARB's cap and trade program and exempt companies that fall under the threshold from reporting under SB 253 and 261. CARB's cap and trade regulation provides inclusion thresholds for "covered entities" based on greenhouse gas emissions and defines the applicability threshold for operators of facilities, first deliverers of electricity, carbon dioxide suppliers, and petroleum and natural gas facilities as 25,000 metric tons or more of CO2 per data year. (Cal. Code Regs., tit. 17, § 95812.) CARB should adopt a similar threshold for SB 253 and 261 to ensure the programs capture what they were intended – large

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companies that contribute significantly to and increase greenhouse gas emissions in the state. The legislative history for SB 253 and 261 confirms that the intent behind these laws is to provide California with proper information to accurately regulate and reduce large corporate polluters. The legislative history further recognizes the burden of reporting emissions, particularly Scope 3 emissions. To avoid unduly burdening business in California that have very small emission levels, CARB should adopt a minimum pollution threshold and exempt companies below the threshold from reporting requirements under SB 253 and 261. This aligns with the policy objectives behind SB 253 and 261 and avoids inequitable results. Alternatively, CARB could require Scope 1 and 2 reporting from companies that fall under the *de minimis* threshold but exempt those companies from reporting Scope 3 emissions.

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 comment at this time.

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

No comment at this time.

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?*

Please see response to comment 1(a) above with regard to recommended clarifications to the definition of covered entities that are subject to reporting under SB 253 and 261 and adoption of a *de minimis* exemption.

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?*

No comment at this time.

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?*

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No comment at this time.

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?*

The statute references World Resources Insitute's GHG Protocol, a broadly used external standard for GHG accounting. As it relates to Scope 2 accounting, the GHG Protocol requires companies to report both "market-based" and "location-based" emissions. Location-based emissions reporting reflects the simple grid average emissions for where a company's operations are located. Market-based emissions reflect a company's energy purchase contracts, whether the purchase was through a utility green power program or some other form.

CARB should allow market-based reporting of Scope 2 emissions for two primary reasons:

1. The market-based method aligns with the way electricity markets work. Throughout California and the United States, electricity and the emissions associated therewith are bought, sold, transferred, allocated, and differentiated using contracts. Electricity generators, utilities, marketers, and consumers all use contracts to identify and claim what they own. This is how wholesale electricity markets work, this is how renewable portfolio standards in California and other states work, and how it works when end-use companies and consumers voluntarily buy renewable and other electricity products from suppliers. If you own it, you can and should be able to claim it.

2. The market-based method aligns with the reporting methodology CARB uses for its Mandatory Greenhouse Gas Reporting Regulation and other emissions-based regulations. CARB has already determined that contracts are the basis for tracking electricity related emissions, be it for specified power or unspecified power. There is clear precedent for using contracts to track ownership of emissions by CARB and the same treatment should be allowed for reporting under SB 253 and SB 261.

Please also see above comments regarding the scope of entities that should be subject to SB 253 and 261 reporting.

   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?*

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If CARB requires entities to report separately from the Mandatory Reporting of Greenhouse Gas Emissions ("MRR"), it should give the entities a choice as to reporting emissions in the form of what is required for MRR, or the methodology that CARB endorses for its Climate Disclosure program.

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?*

Standards and protocols for climate reporting are rapidly evolving. Therefore, DTE recommends that CARB monitor updates to standards and provide flexibility in reporting methods rather than impellent a specific reporting method that may become obsolete. WRI, for example, is in the process of revising its Scope 1, 2, and 3 guidelines. This process is not anticipated to be completed until 2027 and 2028. CARB should both allow for flexibility and provide a safe harbor for entities that rely on WRI's guidance or other recognized reporting guidelines in complying with SB 253 and 261.

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?*

   No comment at this time.

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

   If SB 253 reporting will require the submission of raw data at a level that is more granular than what is currently required by the GHG Protocol or other voluntary reporting frameworks, then such data should not be disclosed to third parties and should be reported directly to CARB. Raw emissions data is sensitive information and may include confidential business information. Non-governmental entities are more susceptible to third-party data breaches or acquisition by foreign entities.

   However, to the extent that emissions data can be aggregated, DTE would support reporting to reputable, third-party non-profit organizations that already have systems in place to receive emissions data under other voluntary frameworks.

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

No comment at this time.

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?*

   Scope 1 and 2 Reporting:

   CARB should avoid modifying the GHG Protocol for Scope 1 and 2 emissions. The GHG Protocol is an established standard that has been utilized by companies for years. Imposing additional standards would likely increase compliance costs and complexity, especially for entities that currently use the GHG Protocol as written. Standardizing Scope 1 and 2 would require companies to duplicate efforts to meet both the GHG Protocol and CARB's modified version. Moreover, standardization would undermine the built-in flexibilities of the GHG Protocol that allow it to be tailored to specific industries. Third-party verification of emissions can ensure that the GHG Protocol is applied correctly based on individual company circumstances.

   Scope 3 Reporting:

   Standardizing some aspects of Scope 3 reporting may be useful to the extent it does not sacrifice the built-in flexibilities of the GHG Protocol. For example, additional clarity could be provided to avoid the double-counting of emissions, such as who is responsible for emissions reporting in certain commercial relationships. Identifying applicable parties within the value chain may also be useful.

   However, any efforts to standardize Scope 3 reporting should not, in turn, increase the burden of Scope 3 reporting. The GHG Protocol states that accounting for Scope 3 emissions does not require a full-blown GHG life cycle analysis of all products and operations. CARB should similarly avoid expanding the number of reporting categories present in the GHG Protocol for Scope 3 or requiring entities to report on categories that may not be applicable or relevant to their particular industry.

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*

[1] https://ghgprotocol.org/

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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 many CPA-type providers serving this space already for other mandatory reporting programs in California such as MMR, the Low Carbon Fuel Standard ("LCFS"), and Cap-and-Trade. Regulated entities could use providers that already specialize in these mandatory programs or similar providers used by voluntary reporting programs such as the Climate Registry and/or the Carbon Disclosure Project.

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

   There are already existing terminologies and frameworks outlined by assurance providers under the American Institute of Certified Public Accountants or the International Standards on Assurance Engagements. Additionally, the International Standard on Sustainability Assurance 5000 aims to provide specific guidance tailored to assurance engagements for sustainability-related disclosures.

   However, CARB should consider an alternative definition for reasonable assurance than what is provided in the MMR. The MRR definition may not provide the same level of flexibility than other definitions used in global frameworks, potentially leading to challenges in applying the assurance process to different contexts. Furthermore, MMR provides no definition for "limited assurances."

   Furthermore, CARB should not require any assurances for emissions reporting until it is clearly feasible, particularly for Scope 2 and 3 emissions, which are more difficult to measure and manage because they are generated by third parties that the reporting entity has varying degrees of influence over.

   Scope 3 emissions are a consequence of the activities of the company but occur from sources that are not owned or controlled by the company. Collecting accurate data for Scope 3 emissions is endlessly challenging due to the reliance on third-party data, estimates, and the need to track emissions across multiple stages of the value chain. Control over the data provided by third parties, as well as the accuracy and

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[2] "Reasonable Assurance" under MRR means a "high degree of confidence that submitted data and statements are valid."

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availability of that information, may be especially limited for Scope 3 emissions, making any level of assurance difficult.

These challenges in data collection and verification create a higher risk of inaccuracies in Scope 2 and 3 emissions reporting. Providing assurance on such data could lead to false confidence in the reported figures, potentially misleading stakeholders and the public. For these reasons, a lower assurance level for Scope 2 and 3 reporting is a more practical and feasible approach until the methodologies and data collection processes are more mature and standardized.

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:*

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

      Most entities currently report voluntarily report emissions data annually, covering a one-year period.

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

      For CDP, the reporting is completed on an annual basis with the portal opening in April every year and submissions due in July.

      The deadline for MMR is April 10 and June 1, depending on source and emission levels. CARB then performs quality control on the data. Final verification statements are due for all reports, including emissions, supplier data, and product data on August 11. CARB reporting and verification for LCFS are not complete until late August or early September.

      SB 253 emissions reporting should not be required before reporting under these other programs. Rather, the deadline for submitting SB 253 emissions data should occur after the other reporting deadlines to allow regulated entities to incorporate feedback from CARB and make any necessary adjustments before submitting their report under SB 253. Thus, DTE recommends you consider an October 1 deadline.

      DTE notes that a later reporting deadline may be warranted once Scope 3 reporting begins. Scope 3 reporting will require regulated entities to acquire data from third-party entities within their value chain, placing regulated entities at the mercy of other entities' reporting standards. Moreover, managing and reducing Scope 3 emissions often requires collaboration and engagement with suppliers, customers, and other stakeholders throughout te supply chain.

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

No comment at this time.

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?*

    As noted above for SB 253, DTE recommends an October 1 reporting deadline and that assurance review is completed by the end of the year. This reporting timeframe will allow entities to complete other reporting requirements for programs such as the MRR and LCFS and ensure that entities have all information and data needed to complete reporting.

    To the extent an entity qualifies as a reporting entity for the first time during the two years before a reporting year, that entity should be afforded time to report in the subsequent biennial cycle.

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.)?*

    No comment at this time.

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?*

    No comment at this time.

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?*

       No comment at this time.

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

       No comment at this time.

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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?*

No comment at this time.

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?*

No comment at this time.

Respondents may also provide any additional information they feel is important to inform staff's work to implement the statutes.

In implementing SB 253 and 261, CARB should recognize actions, purchases, and steps taken by entities and individuals to reduce the impacts of Scope 1, 2, and 3 emissions. Specifically, CARB should recognize and allow accounting for renewable energy certificates ("RECs") and carbon offsets in implementing SB 253 and 261, consistent with WRI greenhouse gas accounting.

Conclusion

DTE appreciates the opportunity to submit comments on the implementation of SB 253 and 261. We are committed to supporting effective and transparent climate disclosure practices and look forward to continued collaboration with CARB and other stakeholders. Thank you for considering our input. If you have any questions, please contact me at fadi.mourad@dteneenergy.com.

Very truly yours,
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