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

KERN ENERGY_SUBMISSION

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?
Yes. The established definition of "doing business in California" from California Revenue and Taxation Code § 23101 provides consistent, clear guidance for defining which entities are subject to SB 253 and SB 261.

b. Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"
Yes. SB 253 was intended to bring transparency regarding GHG emissions beyond those already captured in existing State policies. Federal, state, and local government activities are significant drivers of emissions and their contributions to overall GHG emission totals are not fully captured today. In passing the Corporate Climate Disclosure Act (CCDA), the Legislature found "the people, communities, and other stakeholders in California...have a right to know about the sources of carbon pollution...in order to make informed decisions," which necessarily must include government entities for the sake of complete and full disclosure. Requiring federal and state government entities that generate annual revenues of more than $1,000,000,000 to report Scope 1, Scope 2, and Scope 3 emissions would serve the spirit of transparency and informed climate risk assessment foundational to the goals of SB 253 and SB 261. It may also help the State better understand the difficulties reporting entities will inevitably face, particularly in quantifying and reporting Scope 3 emissions.

c. Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?
Yes. Business entities that are partly or wholly owned by foreign governments should be covered if they otherwise meet the criteria and do business in California. Excluding these entities would create an uneven playing field favoring foreign government-owned entities, allowing them to do business in California without being subject to the compliance burden and accountability of other entities. Failing to count the emissions associated with and contributed by these entities' business activities conducted in California is contrary to the CCDA's demand for transparency and would necessarily result in an incomplete accounting of carbon emissions in the State.

SB 253 specifically mandates reporting "in conformance with" the GHG Protocol and its guidance. SB 261 similarly requires risk reporting "in accordance with" or "consistent with" TCFD or Sustainability Disclosure Standards (SDS).

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?

To inform its regulatory development, CARB should consider existing research and data on the costs of climate reporting and the many factors that drive those costs. Kern Energy is concerned that we could see a significant increase in compliance costs and a counterproductive schedule absent this foundational understanding of costs reporting entities already incur for similar regulatory requirements. Similar to this questionnaire informing the rulemaking process, CARB could also poll parties willing to share costs of their regulatorily-required and/or voluntary GHG accounting programs.

The existing process for reporting GHG emissions involves gathering and verifying data in preparation for submission to numerous agencies. This collection and verification can require hundreds of working hours across multiple departments within an organization, on top of external expense averaging $50,000 per year for outside consultants and verification bodies (not including employee compensation). Duplicative reporting furthers this resource and cost burden, and additional requirements of outside agency reporting opens the door to even more expenses associated with third party firms.

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

The ultimate goal should be to make compliance as straightforward as possible. CARB should leverage existing reporting data systems, with attention on how entities currently report data to agencies, and look for ways to link or facilitate communication between reporting systems. It is crucial that CARB be mindful of State costs, entity costs, and what information already gets reported within existing regulatory programs. Companies such as Kern Energy are already resource strained with the cost of reporting under multiple AB32 regulatory programs and federal GHG emissions reporting. Companies of all sizes can exceed the applicable revenue threshold for reporting under SB 253; gross revenue is not an accurate indicator of the size of the company or its ability to shoulder additional compliance costs, such as manpower, consultants, software and/or other technology for reporting. We urge CARB to consider a streamlined reporting structure for all parties.

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. We do not recommend that CARB impose additional state-specific standardization on Scope 1, 2, or 3 emissions reporting beyond what is already required by the GHG Protocol.

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?

Unlike SB 253, SB 261 does not require assurance review and no such requirement should be imposed by CARB. To require an assurance review could nullify the reporting options specified in section 38533(b)(3).

CARB should allow for flexibility and alignment with other reporting schedules, and consider an additional 120-day financial industry standard period for audited financials. The rigid January 1 date currently outlined in the legislation forces companies to report on older data or to rush to include the just-ended year's data without proper due diligence in order to meet an arbitrary reporting deadline. Kern Energy echoes the sentiment of other stakeholders on a timeline that supports maximum flexibility – that is, within each two-year interval, letting companies determine when their climate risk report is published. This schedule mitigates the potential harm to stakeholders imposed by an arbitrary fixed deadline and the information flow is maintained as long as a report is produced every two years. CARB can track compliance simply by ensuring each entity has an accepted report in each cycle. This approach embraces the spirit of the law and good regulatory practice. CARB will get reports that are more reflective of current conditions and integrated with companies' other disclosures, ultimately yielding more useful information for investors and the public

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 allow entities the flexibility to report at any time during a two-year reporting period or nine months after the end of a reporting period. The latter timeframe is consistent with the ISSB reporting deadline. Flexibility in the reporting period allows entities to align disclosures with the most reliable and up-to-date data, enhancing the accuracy and usefulness of reports.