

March 21, 2025

VIA ELECTRONIC SUBMISSION

Corporate Climate Data Reporting and Financial Risk Programs
California Air Resources Board
1001 I St
Sacramento, CA 95814

**Re: California Climate-Disclosure Information Solicitation
Implementation of Senate Bills 253 and 261 (2023), as amended by Senate
Bill 219 (2024)**

The California Independent System Operator Corporation (ISO) provides these comments in response to questions posed by the California Air Resources Board (CARB) regarding implementation of Senate Bill (SB) 253 and SB 261, as amended by SB 219. These measures require certain entities doing business in California to report specified greenhouse gas (GHG) emissions and climate-related financial risks. Among other implementation questions, CARB asks (1) whether to adopt the interpretation of “doing business in California” found in the Revenue and Tax Code section 23101¹ and (2) should the regulations cover entities that sell energy, or other goods and services, into California through a separate market, like the Western Energy Imbalance Market (WEIM) or the Extended Day-Ahead Market (EDAM)? The ISO strongly encourages CARB to clarify in any regulations implementing SB 253 and SB 261 that these measures do not extend to an entity that sells energy through a wholesale electricity market such as the WEIM or EDAM solely by virtue of that entity’s participation in those markets.

The ISO administers the WEIM and will administer the EDAM, which is set to go-live in the spring of 2026. These wholesale electricity markets allow for economically efficient transfers of electricity between and among participating entities across the West. Since inception, the WEIM has yielded approximately \$7 billion in cost savings of which a significant portion has accrued to the benefit of California ratepayers.² The

¹ Revenue and Tax Code section 23101 states “doing business” means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit and provides, among other things, that an out-of-state business is “doing business in California,” even if it has no other presence in or connection with the state so long as it annual sales of \$500,000 in California.

² See January 30, 2025 News release: <https://www.caiso.com/about/news/news-releases/weim-cumulative-benefits-approach-7-billion>. The latest WEIM benefits study from the fourth quarter of 2024 is available here: <https://www.westerneim.com/Documents/iso-western-energy-imbalance-market-benefits-report-q4-2024.pdf>.

WEIM has also provided critical electric reliability benefits to California, especially during extreme weather conditions. The WEIM has helped integrate renewable energy resources throughout the Western Interconnection by balancing supply and demand over a large geographic footprint, allowing intermittent supply to operate when it has available fuel. CARB should not take steps that threaten or undermine these gains.

Several participants in WEIM (and prospective participants in EDAM) operate electric systems and resources outside of California that do not serve retail customers in California. Instead, these entities provide transmission service on their own systems, serve retail customers outside of California, or sell power at wholesale. EDAM will serve as a platform for WEIM participants to join a day-ahead market in addition to a real-time market for energy imbalances. EDAM will increase the ability to achieve economic, reliability and environmental benefits through a day-ahead optimization of all supply and demand among participating entities.

I. CARB should clarify that “doing business in California” does not include wholesale electricity transactions under SB 253 and SB 261

SB 253 directs CARB to promulgate regulations that will require “reporting entities” to annually disclose to the emissions reporting organization data about specified direct and indirect emissions, and also to obtain an assurance engagement performed by an independent third-party assurance provider.³ SB 253 defines “Reporting entity” as any business with total annual revenues of a billion dollars that “does business in California.”⁴ SB 261 directs CARB to adopt regulations to administer a program under which covered entities prepare a climate-related financial risk report every two years.⁵ SB 261 defines “covered entity” as a business with total annual revenues of five hundred million dollars that “does business in California.”⁶

³ California Health and Safety Code Section 38532(c).

⁴ Specifically, “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.” California Health and Safety Code Section 38532(b)(2). Applicability shall be determined based on the reporting entity’s revenue for the prior fiscal year. *Id.*

⁵ California Health and Safety Code Section 38533(b).

⁶ Specifically, “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.” California Health and

In its role as administrative agency, CARB may adopt regulations that are consistent with and do not conflict with enabling statutes.⁷ Neither SB 253 nor SB 261 defines “do[ing] business in California.” A key indicator of the legislative intent in this case is a letter provided to the California State Senate Daily File by the authors of SB 253 and SB 261. Responding to a question as to whether wholesale electricity transactions that occur through WEIM and will occur through EDAM, constitute “doing business in California,” under the definitions of both laws, the authors state it was not their intent to include such energy transactions within the scope of this reporting obligation and provide this clarification to CARB as it proceeds with implementation of both laws.⁸ Their letter states:

The definitions of a “reporting entity” in SB 253 (now Section 38532 (b)(2) of the Health and Safety Code) and of a “covered entity” in SB 261 (now Section 38533 (a)(4) of the Health and Safety Code) are not intended to include a business entity whose only activity within California consists of wholesale electricity transactions that occur in interstate commerce.

Although the Senate Floor Analysis for SB 253 notes that the phrase “doing business in California” is defined in the Revenue and Tax Code section 23101 *et seq.*, the statute does not incorporate this definition. California law recognizes that floor reports and other legislative history should not be presumed to be part of the legislative intent because, unlike the statutory language, they were not adopted.⁹ As such, the Senate Floor Analysis is only one factor for CARB to consider. As described below, CARB can give effect to the language in SB 253 and SB 261 by exercising its authority to find that wholesale sales of electricity through EDAM or WEIM do not constitute doing in business California for purposes of identifying reporting entities/covered entities under SB 253 and SB 261. For purposes of sales of electricity, CARB should clarify

Safety Code Section 38533 (a)(4). 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. *Id.*

⁷ California Government Code § 11342.2.

⁸ California Senate Journal dated January 30, 2024 at 3058-3059:
<https://leginfo.legislature.ca.gov/faces/pubSenDailyJrn2.xhtml?type=doc&sessionyear=20232024&pagenum=3057&sessionnum=0&fileid=996>.

⁹ *Reynosa v. Superior Court of Tulare County*, 101 Cal. App. 5th 967, 983 (2024) (internal quotation marks and citations omitted).

that only retail sales and sales from a generating resource located in California count toward an assessment of doing business in California.

II. CARB should clarify that WEIM Entities and EDAM Entities are not reporting entities/covered entities under SB 253 or SB 261 solely by virtue of wholesale electricity sales through these markets

CARB should clarify that an out-of-state business entity's sales of energy through WEIM or EDAM do not count toward the determination of whether it is considered a reporting entity/covered entity under SB 253 or SB 261. Instead, only retail sales of electricity to California consumers or sales by a generating resource located in California should count toward any definition of doing business in California under SB 253 and SB 261. Any other rule would risk undermining the purpose of the statutory schemes, which includes moving "towards a net-zero carbon economy" and mitigating "significant harm to California, residents, and investors ..."¹⁰ Imposing the reporting obligation on wholesale electricity transactions may discourage participation in WEIM and EDAM, jeopardizing the economic, reliability and environmental benefits they provide to California.

As a threshold matter, wholesale electricity sales serve a different purpose than typical commercial transactions, and thus are not a primary target of SB 253 and 261, which the Legislature expressly aimed in the case of SB 253 at companies that are seeking "access to California's tremendously valuable consumer market."¹¹ In the Western Interconnection, electric utilities necessarily are interconnected, and have significant physical limitations on their choice of trading partners. Wholesale sales help ensure reliability as well as the optimal use of expensive, capital-intensive resources. For example, surplus sales help manage instances in which a resource generates more supply than native demand can consume or provide a financial hedge against the cost of procuring power at a different time of the year when native supply may be insufficient to meet demand. In short, they serve more of a mutual-support role that helps the participating utilities better serve their respective retail customers. Indeed, California has authorized its regulated utilities to procure wholesale sales of electricity, including wholesale electricity imports, to ensure reliable service to retail customers.¹²

¹⁰ See legislative findings and declarations in Section 1(l) of SB 253; see legislative findings and declarations in Section 1(c) of SB 261.

¹¹ See legislative findings and declarations in Section 1(f) of SB 253.

¹² See *generally* California Public Utilities Commission Resource Adequacy homepage: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage>.

CARB already regulates GHG emissions from wholesale electricity transactions and applies mandatory reporting and its cap-and-trade program to electricity imports.¹³ These regulations apply to transactions in the WEIM that are deemed delivered to California. They will continue to apply after EDAM launches. The regulations require reporting of emissions of electricity imports deemed delivered to California and require the retirement of emission allowances based on those deemed delivered imports. As part of this regulatory program, CARB calculates outstanding emissions associated with electricity imports deemed to serve California through the WEIM. Through these reporting and compliance mechanisms, CARB accounts for the direct emissions associated with electricity consumed by California electric loads deemed delivered to them through this wholesale electricity market. As such, CARB can assess the emission intensity associated with electricity consumers' participation in the WEIM and any financial risk associated with the intensity of those emissions. Accordingly, CARB should clarify that wholesale sales of electricity through WEIM and EDAM do not count toward the determination of whether an entity is doing business in California under SB 253 or SB 261.

CARB should consider the potential negative impact of any rule that would impose burdens on wholesale energy transactions. Applying SB 253 and SB 261 to entities in the WEIM and EDAM solely by virtue of their wholesale sales in those markets would create a meaningful disincentive to participate in these markets. Discouraging WEIM and EDAM participation would jeopardize the economic, reliability and environmental benefits these markets will achieve for California electricity customers. This outcome would undermine the purpose of the statutes and other statutory programs to ensure electric reliability and reduce emissions.¹⁴ Focusing on retail sales of electricity instead of wholesale sales for purposes of the definition of doing business in California under SB 253 and SB 261 would avoid applying reporting requirements to entities that are subject to thorough regulation of nearly every aspect of their businesses by other states.¹⁵

¹³ Title 17, CCR, sections 95100-95163; Title 17, CCR, sections 95801-96022.

¹⁴ See *e.g.*, *King v. Burwell*, 576 U.S. 473 (2015) (ruling that the challengers' argument would undermine the larger statutory scheme and produce absurd results; a "fair reading of legislation demands a fair understanding of the legislative plan," and in that case, "Congress passed the Affordable Act to improve health insurance markets, not to destroy them"); *accord Stone v. Alameda Health System*, 16 Cal 5th 1040, 1052 (2024) ("Our fundamental task is to ascertain the Legislature's intent and effectuate the law's purpose").

¹⁵ CARB should not signal to other Western states that it is open season for new reporting requirements that could be imposed on California retail electricity providers merely because they participate in a wholesale electricity market that includes electric utilities located in and regulated by those states.

For all these reasons, CARB should clarify that an out-of-state business entity's sales of energy through WEIM or EDAM do not count toward the determination of whether it is considered a reporting entity/covered entity under SB 253 or SB 261.

Thank you for consideration of these comments.

Respectfully submitted,

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