March 21, 2025

Rajinder Sahota, Deputy Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Via Electronic Submission

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

Dear Deputy Executive Officer Sahota,

The American Council on Renewable Energy ("ACORE") respectfully submits these comments to the California Air Resources Board ("CARB") in response to CARB's December 16, 2024, solicitation of feedback to inform its work implementing Senate Bill 253 ("SB 253," or the "Climate Corporate Data Accountability Act") and Senate Bill 261 ("SB 261," or the "Climate Related Financial Risk Act").[1]

ACORE is a 501(c)(3) national nonprofit organization that unites finance, policy and technology to accelerate the transition to a clean energy economy. ACORE's membership spans the entire energy value chain, including clean energy developers, institutional investors, corporate buyers of clean energy, manufacturers, electric power generators, retail energy providers, and other stakeholders.[2] In 2023, roughly 85 percent of the booming utility-scale domestic clean energy growth was financed, developed, owned, or contracted for by ACORE members. The breadth of ACORE membership and the depth of members' investments provide ACORE with unique insight into greenhouse gas ("GHG") emissions accounting methods and how those methods can influence clean energy investment decisions.

This comment letter begins by describing, in Part I, three key points that inform ACORE's perspective on emissions reporting and climate disclosures. In Part II, ACORE responds to some of the specific questions in CARB's comment solicitation.

I. ACORE's Overarching Comments

Three overarching points relevant to GHG emissions reporting and clean energy investment should inform CARB's approach to implementing California's climate disclosure laws:

> (A) Under SB 253, as amended by SB 219, CARB must follow existing guidance from the Greenhouse Gas Protocol ("GHG Protocol") that allows for the use of market-based accounting, which helps drive clean-energy investments and maintain flexibility for market participants.
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> (B) CARB should not get ahead of the Protocol in adopting new requirements that are not currently part of the Protocol's existing standards and guidance. CARB should establish in its

[1] *See* CARB, Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219 (Dec. 16, 2024).
[2] The views expressed here are those of ACORE and do not necessarily reflect the views of any individual ACORE member company.

regulations that, if changes to the Protocol are made, those changes would not become binding in California until after CARB adopts them by regulation, which would be subject to a public process and transparency.

(C) CARB should ensure that its regulations maximize cross-jurisdictional interoperability, including with the European Union, other countries, and other U.S. states that have adopted or may adopt parallel climate disclosure requirements. Additionally, CARB should seek to maximize intra-jurisdictional interoperability between GHG reporting under SB 253 and California's existing carbon emissions reporting and reduction tracking regimes.

These three overarching points, explained more fully below, are foundational to a corporate disclosure regulatory framework that will help drive continued clean energy investment and development.

A. CARB, in accordance with SB 253 as amended by SB 219, must follow existing guidance from the GHG Protocol that allows for the use of market-based accounting, which helps drive clean-energy investments and maintain flexibility for market participants.

As set forth in the law, CARB's implementing regulations must ensure that Scope 2 emissions reporting allows covered entities to follow the market-based accounting method, aligned with the GHG Protocol's existing GHG reporting guidance. Market-based accounting is critical to driving investment in clean energy because it ensures companies receive full credit in emissions reporting for voluntary procurement of clean energy. Current GHG Protocol guidance on reporting Scope 2 emissions requires "dual reporting" for companies operating in markets that provide product or supplier-specific data in the form of contractual instruments, such as direct contracts or Renewable Energy Certificates ("RECs").[3] Companies using the market-based method account for emissions from electricity that companies have purposefully chosen via REC purchases, power purchase agreements ("PPAs"), and similar market instruments. Market-based accounting thus provides valuable information to regulators, stakeholders, and the public on the electricity sources that companies have purposefully chosen. Moreover, when reporting pursuant to the market-based method following the GHG Protocol, companies already report using a "dual" method that also requires location-based reporting (disclosing grid-average emissions factor data).[4]

B. CARB should not get ahead of the Protocol in adopting new requirements that are not currently part of the Protocol's existing standards and guidance. CARB should establish in its regulations that, if changes to the Protocol are made, those changes would not become binding in California until after CARB adopts them by regulation, which would be subject to a public process and transparency.

Second, CARB should clarify how the California climate disclosure laws will align with the GHG Protocol in light of the fact that the GHG Protocol is currently undergoing revisions. California's SB 253 requires GHG emissions reporting beginning in 2026 for Scope 1 and 2 emissions and in 2027 for Scope 3 emissions. The GHG Protocol is currently undergoing a revision process, with updated standards and guidance expected in 2027. The GHG Protocol has not yet released details on what the phase in approach will be for the new guidance. Ahead of incorporating new versions of the Protocol's standards and

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[3] WORLD RES. INST. & WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., THE GREENHOUSE GAS PROTOCOL: SCOPE 2 GUIDANCE at 8 (2015), https://ghgprotocol.org/sites/default/files/2023-03/Scope%202%20Guidance.pdf.
[4] *Id*. at 8, 25.

guidance into the binding framework in California, CARB should propose those changes in new regulations under a transparent and open process.

Moreover, CARB should consider how changes to reporting guidance—particularly market-based accounting—might impact longstanding claims and commitments and consider allowing flexibility with regard to reporting in conformance with either the existing GHG Protocol framework or any future update. In addition—and in line with ACORE's point above—if the GHG Protocol makes future changes with respect to Scope 2 emissions reporting, CARB should take steps to facilitate the continued use of market-based accounting, which has important benefits for private sector clean energy investment.

The market-based accounting method, as currently defined, helps support investment in clean energy through market instruments including RECs, which are essential to thriving, resilient clean energy markets.[5] For example, without an offtake agreement in place, many project sponsors are unable to fund up-front construction costs.[6] This financing hurdle can prevent wind, solar, and other clean energy projects from coming to fruition. Indeed, in 2023, only 6 percent of new renewable energy capacity did not have an offtake agreement in place.[7]

Market-based accounting helps address some of the challenges associated with project finance because it means that purchasers' reported Scope 2 emissions reflect their purchases of clean energy—incentivizing companies to pursue PPAs and other voluntary procurement arrangements that are often preconditions for clean energy projects to break ground. California can best maintain its leadership role in supporting clean energy investment by ensuring emissions reporting standards continue to include market-based accounting to incentivize the sorts of voluntary procurement that enable clean energy project financing.

Furthermore, many companies are hopeful that the Protocol's current update process will result in reforms and improvements to address current shortcomings. As stakeholders await the outcome of the Protocol's update process, CARB should give reporting companies the option to make additional disclosures in addition to their Scopes 1-3 inventories as required by SB 253. Such disclosures could provide companies the opportunity to discuss their climate actions that do not translate into inventory reductions and offer estimates of quantitative emissions impact. We also encourage CARB to work with the GHG Protocol to ensure that GHG accounting rules best align with California's climate priorities and enable companies to contribute to California's climate and clean efforts.

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[5] *See, e.g.*, Philipp Beiter et. al., *The Enduring Role of Contracts for Difference in Risk Management and Market Creation for Renewables*, NATURE ENERGY (Dec. 5, 2023), https://www.nature.com/articles/s41560-023-01401-w (long-term contracts for difference serve as a risk-management tool that often underpins renewables financing); *see also* Center for Resource Solutions, *Making Voluntary Markets for Clean Electricity Work* (Sept. 5, 2024), https://resource-solutions.org/wp-content/uploads/2024/09/making-voluntary-markets-for-clean-electricity-work.pdf ("market instruments, like renewable energy certificates (RECs), and their recognition in accounting and reporting frameworks, are essential to voluntary clean and renewable electricity markets.").

[6] ACORE, *Report: Bridging Demand and Financing: Voluntary Offtake in Clean Energy* 5 (Dec. 17, 2024), https://acore.org/wp-content/uploads/2024/12/Bridging-Demand-and-Financing-Voluntary-Offtake-in-Clean-Energy.pdf.

[7] Galen Barbose, Lawrence Berkeley National Laboratory, *U.S. State Renewables Portfolio & Clean Electricity Standards: 2024 Status Update* 16 (Aug. 2024), https://eta-publications.lbl.gov/sites/default/files/lbnl_rps_ces_status_report_2024_edition.pdf.

C. CARB should further ensure cross-jurisdictional and intra-jurisdictional interoperability.

The California climate disclosure laws were designed to allow for cross-jurisdictional climate reporting and to minimize duplication of effort.[8] CARB should ensure that its regulations maximize interoperability across jurisdictions and reduce duplication of effort for entities subject to multiple disclosure obligations, including forthcoming requirements potentially on the horizon. Implementation of these laws should therefore prioritize interoperability and flexibility. CARB should continue to harmonize reporting requirements with other jurisdictions in order to reduce reporting burdens and make it easier for investors to compare companies' impacts, risks, and opportunities on an apples-to-apples basis.

In addition, CARB should seek to maximize interoperability with California's existing GHG emissions reporting and reduction tracking regimes. In particular, the GHG Protocol does not always account for emissions the same way as some of California's climate regulations, such as the Low Carbon Fuel Standard ("LCFS") and the Renewable Portfolio Standard ("RPS"), which use lifecycle emissions and annual renewable electricity reporting, respectively. As a result, some corporate actions urged by the State of California to reduce emissions are not recognized as emissions reductions under the GHG Protocol, which provides a disincentive for companies to invest in these solutions. CARB should recognize instances where the Protocol does not align with California's own priorities in addressing companies and disincentives the Protocol creates for companies in lowering GHG emissions.[9] Due to these gaps, CARB should give reporting companies the option to make additional disclosures in addition to their Scopes 1-3 inventories as required by SB 253. Such disclosures could provide companies the opportunity to discuss their climate actions that do not translate into inventory reductions and offer estimates of quantitative emissions impact. We also encourage CARB to work with the GHG Protocol to ensure that GHG

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[8] *See* Cal. Health & Safety Code § 38532(c)(2)(D)(i) (SB 253 emissions reporting must be "structured in a way that minimizes duplication of effort and allows a reporting entity to submit . . . reports prepared to meet other national and international reporting requirements"); *id*. § 38533(b)(3) (an entity satisfies SB 261 "if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information . . . [p]ursuant to a law, regulation, or listing requirement issued by any regulated exchange, national government, or other governmental entity . . . incorporating disclosure requirements consistent with" SB 261).

[9] Examples include:

- Clean electricity procurement – Many companies prioritize deploying new capacity by investing in or signing long-term PPAs with on-site solar, larger-scale off-site wind and solar, and community solar. The Protocol's Scope 2 accounting rules do not provide companies with adequate reporting options to demonstrate strategies that achieve relatively higher GHG reduction from those that achieve lesser impact.
- Procuring biogas and biofuels – California' LCFS is built on comparing the lifecycle carbon intensity of individual fuels versus conventional fuels. In contrast, under the Protocol, companies account for combustion emissions in Scope 1 and emissions from upstream extraction and processing in Scope 3. In the specific instance of renewable natural gas ("RNG"), the Protocol does not permit companies to report the upstream methane abatement that occurs in collecting RNG within a Scope but as an avoided emission "out-of-scope." Without enabling companies to realize lifecycle improvements in fuel use with one metric similar to the LCFS, the Protocol undercuts company incentive to use alternative fuels.

accounting rules align with California's own climate priorities and enable companies to contribute to California's efforts.

II. ACORE's Responses to Specific CARB Questions

ACORE provides responses below to some of the questions CARB posed in its comment solicitation. The CARB questions are included in bold, with ACORE responses immediately below.

Question 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 GHG Protocol revisions are not expected be finalized until 2027, but California reporting obligations under SB 253 and SB 261 commence in 2026. Because of the timing and uncertain content of the forthcoming GHG Protocol update, ACORE recommends that CARB allow entities to report their emissions in accordance with the current GHG Protocol standards and guidance indefinitely. In addition, CARB could allow the option to report under any eventual Protocol revision, to provide maximum flexibility to reporting entities. At minimum, however, in order to provide regulatory clarity and stability, CARB should allow reporting under the current GHG Protocol at least through 2029 and until CARB can assess the workability of the finalized GHG Protocol revisions, including through feedback from the public. Otherwise, CARB risks requiring entities to comply with an external, non-governmental, as-yet-unwritten standard that CARB has not reviewed.

CARB should adhere to reporting under the current version of the GHG Protocol because it has proven to be a workable, informative framework with which reporting entities across jurisdictions have become well versed through voluntary reporting. CARB could additionally consider allowing entities to elect to report under any subsequent GHG Protocol standards and guidance. This would mean that California reporting would maintain the flexibilities in the current version of the Protocol, which the law expressly references,[10] while also affording entities the option to shift to the revised version if and when it is finalized. Finally, ACORE cautions against *requiring* a shift to any revised GHG Protocol at least until CARB has an opportunity to carefully review updated standards and guidance to ensure they are appropriate and workable, and CARB opens a public comment period for stakeholder input. CARB should consider how changes to the GHG Protocol reporting guidance - particularly market-based accounting - might impact longstanding claims and commitments.

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?

ACORE commends CARB's attention to minimizing duplication of effort for entities that may be required to report under other mandatory programs, including in the United States and in other countries.

SB 253 requires emissions reporting be "structured in a way that minimizes duplication of effort and allows a reporting entity to submit . . . reports prepared to meet other national and international reporting

[10] *Id*. § 38532(c)(2)(A)(ii).

requirements," provided such reports satisfy SB 253 requirements.[11] The European Union has similar disclosure requirements under its Corporate Sustainability Reporting Directive ("CSRD"), and several U.S. states are currently considering legislation to establish GHG emission reporting requirements very similar to California's requirements.[12] CARB should consider promulgating implementing regulations or guidance that clarifies which jurisdictions' disclosure obligations are consistent enough with California's such that reports for those jurisdictions will suffice for purposes of SB 253 compliance. Further, because SB 253 does not currently mention other U.S. states in this harmonization provision, CARB and/or the California legislature should make clear that submitting reports prepared to meet the requirements of other equivalent state laws (if and when they are enacted) will also suffice for purposes of compliance with SB 253.

Similarly, SB 261 provides that an entity satisfies its requirements "if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information . . . [p]ursuant to a law, regulation, or listing requirement issued by any regulated exchange, national government, or other governmental entity . . . incorporating disclosure requirements consistent with" SB 261).[13] The New York legislature is considering a bill this year that would require a very similar climate-related financial risk report. In order to maximize flexibility across jurisdictions, including with any forthcoming state requirements, CARB and/or the California legislature should clarify that other equivalent U.S. state requirements are encompassed within this provision.

For both SB 253 and SB 261, CARB should monitor other state, federal, and non-U.S. proposals and laws to determine which requirements are sufficiently equivalent to California's requirements.[14] Finally, CARB should consider participating in conversations and meetings with regulatory authorities in other states and jurisdictions to share best practices and approaches that may aid in further harmonization and reduce duplication of effort for covered entities on an ongoing basis.

Question 7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, 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?

CARB should avoid standardizing GHG reporting beyond what is in the current GHG Protocol standards and guidance. The current GHG Protocol approach has a demonstrated track record as a workable, useful approach, which already has standardized GHG emissions accounting across reporting entities.

Further, ACORE encourages CARB to maintain the flexibilities included in the existing GHG Protocol standards—in particular, the flexibility represented by "dual reporting" of Scope 2 emissions using both the location- and market-based methods.

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[11] *Id*. § 38532(c)(2)(D)(i).
[12] *See, e.g.,* New York S.B. 3456; New Jersey S. 4117; Colorado H.B. 25-1119; and Illinois H.B. 3673; *see also* Drew Hutchinson, *States Advance Climate Disclosure Proposals as SEC Steps Back*, BLOOMBERG LAW (Feb. 28, 2025), https://news.bloomberglaw.com/environment-and-energy/states-advance-climate-disclosure-proposals-as-sec-steps-back.
[13] Cal. Health & Safety Code § 38533(b)(3).
[14] New York S.B. 3697.

Market-based accounting incentivizes entities to invest in clean energy, because it creates a way for entities to receive credit for lower emissions power purchases in their emissions reporting. In light of the role that market-based accounting plays in driving clean energy investment, ACORE encourages CARB to ensure that its regulations do not limit market-based accounting for California reporting purposes.

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ACORE appreciates the opportunity to provide comments to CARB to assist in the effective implementation of California's climate disclosure laws, including in a manner that aligns with clean energy development.

If you have any additional questions about these comments, please contact: Lesley Hunter at hunter@acore.org.

Respectfully submitted,

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