February 9, 2026

Clerk's Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted online via https://ww2.arb.ca.gov/lispub/comm/bclist.php

Re: Berkshire Hathaway Energy Comments on CARB's Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation

Berkshire Hathaway Energy ("BHE") is a global energy services provider serving more than 13 million customers and end-users throughout the U.S., Great Britain and Alberta, Canada. BHE does business in California and anticipates it is subject to reporting requirements under the Corporate Climate Data Accountability Act authorized by Senate Bill 253 ("SB 253") and the Climate-Related Financial Risk Act authorized by Senate Bill 261 ("SB 261"), both as amended by SB 219. We appreciate the opportunity to provide comments on the California Air Resources Board's ("CARB") Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation posted December 23, 2025 (the "Proposed Rule").

While BHE supports CARB's goal of establishing a workable fee framework to administer these climate-related disclosures required by SB 253 and SB 261, the Proposed Rule, as currently drafted, does not provide sufficient clarity regarding which entities within a parent-subsidiary corporate structure may be assessed an implementation fee under Subarticle 2 (Fees), nor how that fee assessment relates to or interacts with consolidated reporting under SB 253 and SB 261. Absent clarification, this uncertainty creates a risk of inconsistent fee assessment and unequal treatment. This uncertainty is compounded by the fee enforcement provisions of the Proposed Rule, which appear to exceed CARB's statutory authority and do not provide a mechanism for dispute. Finally, without additional detail regarding the regulatory implementation of the SB 253 and SB 261 disclosure frameworks, it is impossible for stakeholders to make meaningful comments on CARB's Proposed Rule.

For these reasons, BHE encourages CARB to: (1) clarify which entities in parent-subsidiary structures are responsible for fee payment, and regardless, provide that fees will be assessed on a per-filing basis; (2) align fee assessment with the statutory structure of SB 253 and SB 261 by assessing fees on a per-filing basis; (3) align any enforcement of fee nonpayment with the statutory authority provided in SB 253 and SB 261; and (4) allow additional comment on Subarticle 2 of the Proposed Rule after CARB releases additional proposed regulations that further articulate implementation of SB 253 and potentially SB 261.

The Final Rule Should Clearly Identify Which Legal Entities in Parent-Subsidiary Structures are Subject to a Fee.

Subarticle 2 of the Proposed Regulation provides that annual fees are assessed on "reporting entities" and "covered entities," and that CARB will issue a fee determination notice to each "affected entity." However, the regulation does not define the term "affected entity," nor does it explain how CARB will identify the fee-paying entity where a parent company and one or more subsidiaries are involved.[1] Although the Proposed Rule defines "parent" and "subsidiary,"[2] those definitions are not linked to any operative provision governing fee liability. As a result, entities are left without clarity as to whether CARB intends to assess a fee to a parent company only, assess fees to individual subsidiaries that independently meet statutory revenue and "doing business in California" thresholds, or assess fees to both parent and subsidiary entities even when reporting is consolidated at the parent level. This lack of clarity is particularly significant because the Proposed Rule would establish a fee enforcement mechanism with daily penalties for nonpayment[3] making clear identification of the fee-liable entity essential for due process and compliance planning.

The Proposed Rule Should Clearly Align Fee Assessment With the Statutory Structure of SB 253 and SB 261 by Assessing Fees on a Per-Filing Basis.

The ambiguity in the Proposed Rule is compounded by the different ways in which SB 253 and SB 261 treat parent-subsidiary relationships for reporting purposes. Under SB 261, the statute expressly provides that climate-related financial risk reports may be consolidated at the parent company level and that, where a subsidiary qualifies as a covered entity, the subsidiary "is not required to prepare a separate climate-related financial risk report" if included in a parent's consolidated report.[4] The statute therefore makes a clear distinction between a subsidiary's *potential eligibility* as a covered entity and its *actual reporting obligation* when the parent consolidates reporting. SB 253 similarly places reporting obligations on the "reporting entity" and requires disclosure of Scope 1 and Scope 2 emissions from sources the reporting entity owns or directly controls,[5] with reporting to be conducted in accordance with the Greenhouse Gas Protocol. And SB 253, as amended by SB 219, similarly provides that a subsidiary that qualifies as a reporting entity is not required to prepare a separate report if reporting is consolidated at the parent company level. Neither statute, however, specifies how consolidated reporting affects fee liability, leaving that issue for CARB's implementation.

In light of these statutory provisions, it is unclear how CARB intends to apply the fee framework in Section 96073 of the Proposed Rule—particularly the calculation variables N_{38532} (number of reporting entities) and N_{38533} (number of covered entities)—in cases where a parent company elects or is permitted to file a consolidated report encompassing one or more subsidiaries.

[1] *Proposed Rule*, §§ 96071, 96073-96074.
[2] *Id*., § 96072(a)(10), (16).
[3] *Id*., § 96075.
[4] CAL. HEALTH & SAFETY CODE § 38533(b)(2).
[5] CAL. HEALTH & SAFETY CODE § 38532(b)(2)-(4).

Specifically, the Proposed Rule does not clarify whether a subsidiary whose emissions or climate-risk disclosures are included in a parent's consolidated report will be counted as a separate "reporting entity" or "covered entity" for fee purposes or whether subsidiaries that do not have an independent reporting obligation, but are nonetheless covered by a report, may be assessed a separate fee. CARB has also not explained in the Proposed Rule whether it will assess separate fees for every entity covered by a single report. If the fee is assessed on a per-entity basis, as opposed to a per-filing basis, CARB stands to assess multiple fees for the same report where reporting is consolidated at the parent level. BHE strongly encourages CARB to assess a single fee *per filing entity,* which would enhance CARB's ability to administer reports and reporting obligations under SB 253 and SB 261, promote uniformity and predictability for filers, and more efficiently serve the purposes of the relevant statutes.

Additionally, without further clarification, the Proposed Rule creates a risk of inconsistent fee assessment across similarly situated corporate groups, depending on how CARB interprets and applies the undefined term "affected entity." This uncertainty is particularly acute for companies with complex corporate structures and regulated subsidiaries, including energy and utility holding company systems. Moreover, assessing fees on subsidiaries that do not have an independent reporting obligation—particularly where a parent is reporting on their behalf—would be difficult to reconcile with both the structure and intent of SB 253 and SB 261, which tie fee authority to the administration and implementation of reporting obligations. Fees assessed in the absence of a corresponding reporting obligation could also undermine the statutory direction that fees be "actual and reasonable" costs of administering these programs.[6]

To address these issues and to ensure predictable, administrable and equitable implementation, BHE respectfully requests that CARB address, either in the final regulation text or in binding guidance, the following:

1. The entity that submits the required report is the only fee-liable entity in a parent–subsidiary structure where reporting is consolidated at the parent level under SB 253 and/or SB 261.

2. That subsidiaries whose reporting obligations are satisfied through a parent's consolidated filing are excluded from the count of N_{38532} or N_{38533} for purposes of calculating the annual fee.

3. How CARB will ensure that a single corporate group is not assessed duplicative fees for the same underlying reporting activity when parent-level consolidation is permitted or required.

4. The meaning and scope of the term "affected entity" in Section 96074(a), including whether that term is intended to encompass only the reporting or covered entity that is responsible for filing, or potentially multiple entities within the same corporate family.

[6] CAL. HEALTH & SAFETY CODE §§ 38532(c)(1)(G), 38533(c)(2).

Providing this clarity in the final rule will improve transparency, support compliance and better align the fee structure with the reporting frameworks established by SB 253 and SB 261.

The Final Rule Should Ensure That Fee Enforcement is Consistent with Statutory Authorization and Provides a Dispute Procedure.

Given the lack of clarity regarding fee assessment, it is problematic that the Proposed Rule would authorize penalties, injunctions and per-day violations for "the failure to pay the full amount of any fee required," classifying each day after the due date as a separate violation and invoking CARB's administrative hearing procedures to enforce collection.[7] However, neither SB 253 nor SB 261 identifies "nonpayment of an administrative implementation fee" as an enumerated violation for which CARB is directed to adopt enforcement rules. To the contrary, SB 253's penalty provision addresses reporting-related noncompliance (e.g., non-filing, late filing) and expressly caps penalties in a "reporting year." SB 261 likewise directs CARB to adopt administrative penalties tied to reporting obligations (e.g., failure to make the required report publicly available or publishing an inadequate report). Neither statute expressly authorizes treating fee nonpayment as a substantively separate violation subject to daily penalties and injunctive relief under Title 17.

This lack of statutory authority is especially problematic here because the Proposed Rule lacks sufficient information for potentially regulated parties to determine which specific legal entities within a parent-subsidiary structure will receive fee assessments, and whether those assessments will be correct. As discussed above, the regulation does not define "affected entity" and does not specify how CARB will count entities in consolidated reporting scenarios when determining N_{38532} and N_{38533} for the fee formula. Compounding this ambiguity, the Proposed Rule does not outline any process to dispute or administratively challenge a fee assessment before penalties begin to accrue—there is no dedicated invoice protest, appeal or reconsideration mechanism for fee determinations (compare Section 96075's penalty and injunction tools with the absence of a fee-assessment contest provision).

BHE respectfully submits that, before adopting any regulation that imposes daily penalty exposure for fee nonpayment, CARB should: (1) identify the specific statutory authority for fee-nonpayment enforcement under SB 253 and SB 261, or tailor the enforcement text to the statutes' enumerated reporting violations; and (2) adopt a clear, timely and accessible fee-dispute process (e.g., an invoice protest window tolling penalties while a good-faith challenge is pending; defined evidentiary standards; and a written decision subject to administrative rehearing). These steps would better align Subarticle 2 with the Legislature's reporting-centric enforcement directives and ensure basic procedural fairness where the Proposed Rule presently leaves who is liable and how an entity can contest liability uncertain.

[7] *Proposed Rule*, §§ 96075(a)-(d), 96074(c).

CARB Should Provide an Additional Opportunity for Public Comment on the Fee Structure After Clarifying Fee Applicability for Parent–Subsidiary Structures and for Consolidated Reporting.

Because the Proposed Rule does not yet clearly define which legal entities within a parent-subsidiary corporate structure are subject to fee assessment under Subarticle 2, stakeholders currently lack a meaningful opportunity to evaluate the practical and economic implications of the proposed fee structure. The substantive effect of the fee calculation provisions in Section 96073—including the determination of the number of reporting entities (N_{38532}) and covered entities (N_{38533})—necessarily depends on how CARB ultimately resolves the questions regarding fee liability for parent companies versus subsidiaries, and the interaction of fee assessment with consolidated reporting under SB 253 and SB 261. Until those threshold issues are clarified, it is not possible for regulated entities to fully assess whether the proposed fee methodology is reasonable, equitable or consistent with the statutory directive that fees reflect CARB's actual and reasonable program administration costs.

Accordingly, BHE respectfully requests that CARB commit to accepting and responding to public comment on the fee structure and fee schedule after these clarifications have been made in subsequent rulemaking. In particular, BHE urges CARB to:

- defer final evaluation of stakeholder comments on the fee calculation methodology until CARB has clarified which entities may be assessed a fee when reporting is consolidated at the parent level; and

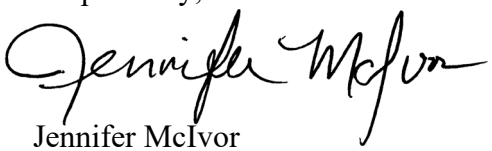
- provide a clear procedural opportunity for potentially affected entities to comment on the fee structure once the scope of fee-liable entities is known.

Providing an opportunity to comment on the fee schedule *after* these clarifications are issued is essential to ensure meaningful notice and comment and to allow stakeholders to evaluate the fee structure based on the substantive regulatory framework that will govern their compliance obligations. Without such an opportunity, regulated entities would be forced to comment on a fee proposal in the abstract, without understanding how the regulation will apply to real-world corporate structures. Proceeding to finalize the fee structure under these circumstances would deprive the public of a fair opportunity to understand and comment on the real-world implications of the proposal and would risk a rulemaking record that does not meaningfully grapple with the most consequential design choices.

BHE seeks assurance that CARB will allow stakeholders to provide informed input on the fee provisions once the contours of fee applicability are sufficiently defined. This approach would improve the quality of the administrative record, reduce the risk of unintended or inequitable outcomes, and support successful implementation of SB 253 and SB 261 consistent with legislative intent.

BHE welcomes continued engagement with CARB to ensure the effective implementation of SB 253 and SB 261.

Respectfully,



Jennifer McIvor
Senior Vice President, Chief Environment and Sustainability Officer
Berkshire Hathaway Energy Company
7215 Navajo Street
Council Bluffs, IA 51501
712-352-5434
jennifer.mcivor@brkenergy.com