June 11, 2021

The Honorable Gary Gensler, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Climate Change Disclosures

Dear Chair Gensler:

Thank you for the opportunity to comment on improving the Securities and Exchange Commission (SEC or Commission) climate change disclosure requirements. The Center for Biological Diversity (Center) is a national non-profit advocacy organization with more than 1.7 million members and online activists, and our Energy Justice program focuses on the urgent need to expedite the renewable energy transition to protect human health, the natural environment, and species from the ravages of climate change. In light of the critical role utilities in particular must play in this transition, these comments focus on utility companies, and the ways that climate change disclosures should shed light on how these corporations are addressing – or posing obstacles to addressing – the climate emergency, and the emergency's impacts on disproportionately impacted communities.

To set the appropriate frame for these comments, we begin by discussing the climate emergency and its impacts, and also briefly recapping the SEC's and other countries' efforts to address climate change disclosures to date. In light of that background, our comments provide recommendations concerning the agency's questions 4, 5, 8, 9, and 10-12, with a focus on climate change disclosures for utilities.

Background

A. The Climate Emergency

Given the overwhelming scientific consensus concerning the climate emergency and the critical role of greenhouse gas (GHG) emissions in fueling that emergency, it might appear superfluous to review climate science here, and indeed, it is evident from the Commission's actions to date that the agency recognizes both the climate science, and the vital role that climate disclosures play in investor decision-making.

Nonetheless, the Commission recently received comments from a group calling itself the "CO2 Coalition" claiming that there is no such thing as a climate crisis, that rising GHG emissions are a positive development, and that requiring businesses to make disclosures about climate change

is akin to disclosures regarding how they would "address an asteroid strike."[1] Accordingly, we begin by briefly addressing both the climate emergency and the urgent actions needed to avoid the worst impacts of climate change.

Scientists in the United States (U.S.) and around the world all concur that human-caused climate change is bringing widespread harms throughout the country and the world. As the U.S. government summarized in its most recent authoritative Report on the subject (the Fourth National Climate Assessment (NCA)), issued during the Trump Administration, "evidence of human-caused climate change is overwhelming and continues to strengthen, [ ] the impacts of climate change are intensifying across the country, and [ ] climate-related threats to Americans' physical, social, and economic well-being are rising."[2]

The different futures that we will experience at or above 2°C of warming, as opposed to below 1.5°C, are stark, including, for example, substantially more deadly heatwaves and drought; exposing 10 million more people to flooding, with the added risk of collapsing ice sheets making flooding exponentially worse; the virtual elimination of coral reefs; doubling of the number of vertebrate and plant species losing more than half their range; and up to several hundred million more people exposed to climate-related risks and susceptible to poverty by 2050.[3]

Climate change poses particularly severe threats to environmental justice communities, who are on the front lines of the climate emergency, and disproportionately bear the burden of utilities' and other corporations' failure to sufficiently account for and address climate change-related risks.[4] It also poses additional risks to other vulnerable communities, including children, older adults, immigrant groups, and persons with disabilities and pre-existing medical conditions.[5]

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[1] CO_2 Coal., *CO_2 Coalition Statement Regarding SEC Regulation of Climate Change Disclosures*, CO_2 Coal. (June 9, 2021), https://co2coalition.org/2021/06/09/%EF%BB%BFco2-coalition-statement-regarding-sec-regulation-of-climate-change-disclosures.

[2] U.S. Global Change Rsch. Program, *Impacts, Risks, and Adaptation in the United States*, Fourth National Climate Assessment, Volume II 36 (2018) (NCA4 Vol. II), https://nca2018.globalchange.gov/; *see also* U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. I* (2017), https://science2017.globalchange.gov/; U.S. EPA [U.S. Environmental Protection Agency], Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Fed. Reg. 66,496 (2009); Philip B. Duffy, *et al.*, Strengthened Scientific Support for the Endangerment Finding for Atmospheric Greenhouse Gases, 363 Science 1 (2019) at 1.

[3] IPCC, *2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, 7-11 (IPCC Special Report, Summary for Policymakers).

[4] Carina J. Gronlund, *Racial and socioeconomic disparities in heat-related health effects and their mechanisms: a review,* Curr. Epidemiol. Rep. 1 (3): 165-173 (2014) at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4264980/; R. Dean Hardy, Richard A. Milligan, and Nik Heynen, *Injustice of colorlind adaptation planning for sea-level rise,* Geoforum, 87: 62-72 (2017) at (https://www.sciencedirect.com/science/article/pii/S0016718517302944; NAACP, *Environmental and Climate Justice,* at https://www naacp.org/issues/environmental-justice/. We use the term "environmental justice communities"' in accordance with the definition provided by the White House Environmental Justice Advisory Council ("WHEJAC"), which defines the term as "a geographic location with significant representation of persons of color, low-income persons, indigenous persons, or members of Tribal nations, where such persons experience, or

Fossil fuel pollution is already one of the greatest threats to public health and is only getting worse; direct pollution from fossil fuel combustion is responsible for one in five premature deaths worldwide and rising temperatures due to the fossil fuel-driven climate crisis are expected to cause more deaths than all infectious diseases combined.[6] The fossil fuel economy particularly harms Black, Indigenous, and other communities of color.[7] Black Americans are exposed to 38% more polluted air than white Americans, on average, and more than one million Black Americans live within a half-mile of gas facilities, resulting in higher risks of cancer and other health problems.[8] Communities of color also bear disproportionately high energy burdens, leading to a greater risk of electricity utility disconnection and associated fatalities. *Id.*

This next decade is absolutely crucial to avoiding the most devastating impacts of climate change. The NCA makes clear that the harms of climate change are long-lived, and for that reason the steps taken *now* to combat – or to not combat – GHG pollution will have implications for many decades to come.[9] Thus, as detailed by the Intergovernmental Panel on Climate Change (IPCC), without prompt action across all sectors, the world is headed to 2°C or more of warming in the coming decades, which will lead to catastrophic climate change impacts.[10]

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are at risk of experiencing, higher or more adverse human health or environmental outcomes." White House Env'tal Justice Advisory Council, 79 (May 21, 2021), *WHEJAC Final Report Executive Order 14008*, https://www.epa.gov./sites/production/files/2021-05/documents/whiteh2.pdf..

[5] NCA4, Vol. II, at 540, 548; U.S. Global Change Research Program, The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment (2016); *see also* Nick Watts, *et al.*, *Health and climate change: policy responses to protect public health,* 386 The Lancet 1861 (2015) at 1861.

[6] *See* K. Vohra, *et al., Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem* (2021), https://www.sciencedirect.com/science/article/abs/pii/S0013935121000487; Oliver Milman, *'Invisible killer': fossil fuels caused 8.7m deaths globally in 2018, research finds,* The Guardian (February 9, 2021), https://www.theguardian.com/environment/2021/feb/09/fossil-fuels-pollution-deaths-research; Maninder P. S. Thind, *et al., Fine Particulate Air Pollution from Electricity Generation in the US: Health Impacts by Race, Income, and Geography, Environmental Science & Technology,* 20 Nov. 2019, https://pubs.acs.org/doi/10.1021/acs.est.9b02527.

[7] *See* NAACP *et al.* (2017), *Fumes Across the Fenceline*, http ://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf; *see also* Mikati et al. (2018). *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, American Public Health Association, https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297; *see also* Sarah Kaplan, "Climate Justice is a Racial Justice Problem," Washington Post, June 29, 2020.

[8] *See* NAACP, *et. al* (2017).

[9] NCA4, Vol. II at 34 and 1347.

[10] IPCC, *Global Warming of 1.5°C, An IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (IPCC Special Report) (2018).

Accordingly, many studies have also demonstrated the number of lives that can be saved through rapid GHG emission reductions.[11] Similarly, the Fourth NCA projects that "[b]y the end of this century, thousands of American lives could be saved and hundreds of billions of dollars in health-related economic benefits gained each year under a pathway of lower greenhouse gas emissions."[12] And conversely, failing to reduce GHG emissions will not only cause these more direct public health harms, but will also cause devastating economic losses that will even further aggravate these threats. [13]

The Fourth NCA also finds – with very high confidence – that the *status quo* threatens to bring the planet past tipping points that cannot be cured, leading to even more catastrophic impacts.[14] The IPCC issued a very similar warning in 2014,[15] and the evidence that the climate system is approaching these tipping points only further demonstrates the urgent need for immediate action to address these threats.[16]

The global average atmospheric carbon dioxide in 2019 was 409.8 parts per million (ppm), a level not seen for millions of years.[17] The last time CO_2 in the Earth's atmosphere was at 400 ppm, global mean surface temperatures were 2 to 3°C warmer and the Greenland and West Antarctic ice sheets melted, leading to sea levels that were 10 to 20 meters higher than today.[18]

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[11] Antonio Gasparrini, *et al.*, *Projections of temperature-related excess mortality under climate change scenarios*, 1 Lancet Planet Health e360 (2017); Solomon Hsiang, *et al., Estimating economic damage from climate change in the United States*, 356 Science 1362 (2017); Raquel A. Silva, *et al.*, *Future global mortality from changes in air pollution attributable to climate change*, 7 Nature Climate Change 647 (2017); Marshall Burke, *et al., Higher temperatures increase suicide rates in the United States and Mexico*, 8 Nature Climate Change 723 (2018); Drew Shindell, *et al., Quantified, localized health benefits of accelerate carbon dioxide emissions reductions*, 8 Nature Climate Change 723 (2018).

[12] NCA4, Vol. II, at 541; Shindell, Drew et al., *Quantified, localized health benefits of accelerated carbon dioxide emissions reductions,* 8 Nature Climate Change 291 (2018).

[13] NCA4, Vol. II at 1357 (discussing how "losses in some sectors are estimated to grow to hundreds of billions of dollars by the end of the century"); *id.* at 1358, 1360 (explaining how warming on our current trajectory would cost the U.S. economy hundreds of billions of dollars each year and up to 10 percent of U.S. gross domestic product).

[14] U.S. Global Change Research Program, Climate Science Special Report: Fourth National Climate Assessment, Vol. I (2017) (NCA4, Vol. I), https://science2017.globalchange.gov/ at 411.

[15] IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC (2014) at 72-73 ("With increasing warming, some physical and ecological systems are at risk of abrupt and/or irreversible changes . . . . The risks of abrupt or irreversible changes increase as the magnitude of the warming increases.").

[16] IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC* (2014) at 73-74; Lenton, Timothy M. et al., *Climate tipping points—too risky to bet against*, 575 Nature 592 (2019).

[17] *See* Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide, Climate.gov,* https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide.

[18] Corinne Le Quéré, *Global carbon budget 2018*, 10 Earth Syst. Sci. Data 2141 (2018); World Meteorological Organization, *WMO Greenhouse Gas Bulletin*, No. 13, October 30, 2017 at 5.

The current atmospheric CO_2 concentration is nearly one and a half times larger than the pre-industrial level of 280 ppm, and much greater than levels during the past 800,000 years.[19] The atmospheric concentrations of methane (CH_4) and nitrous oxide (N_2O), two other potent GHGs, are 257 % and 122 % of their pre-industrial levels.[20] Global carbon emissions over the past 15 to 20 years have tracked the highest emission scenario used in IPCC climate projections, the RCP8.5 scenario,[21] which is projected to lead to devastating impacts.[22]

In light of the climate emergency, the IPCC has emphasized the urgent need for "rapid and far-reaching transitions" across all sectors including electricity generation.[23] Indeed, a critical feature of 1.5°C-consistent pathways is that the power sector must be significantly clean by 2030 and achieve a "virtually full decarbonisation" around mid-century.[24] For electricity in particular, the share of renewable energy must reach 60% by 2030 and 77% by 2050.[25]

The U.S. is the world's largest historic emitter of GHG pollution and is currently the world's second highest emitter on an annual and per capita basis.[26] Scientific studies have estimated the remaining U.S. carbon budget consistent with the 1.5°C Paris Agreement target is approximately 25 gigatons (Gt) CO_2 equivalent (CO_2eq) to 57 GtCO_2eq on average,[27] depending on the equity principles used to apportion the global budget across countries.[28] As the U.S. emits around 6

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[19] IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC* (2014) at 4, 44; World Meteorological Organization, WMO Greenhouse Gas Bulletin, No. 13, October 30, 2017 at 1, 4.

[20] *Id.* at 2.

[21] NCA4, Vol. I at 31, 133, 134, and 152 ("The observed increase in global carbon emissions over the past 15–20 years has been consistent with higher scenarios (such as RCP8.5) (*very high confidence*)").

[22] IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC (2014) at Figure 2.1.

[23] *Id.* at 15.

[24] IPCC Special Report, at112.

[25] IPCC Special Report, Summary for Policymakers, at 12.

[26] LeQuéré, Corinne *et al., Global Carbon Budget 2018*, 10 Earth Sys. Sci. Data 2141, 2161 fig. 5 (2018); Global Carbon Project, Global Carbon Budget 2018, 19 (Dec. 5, 2018), https://www.globalcarbonproject.org/carbonbudget/archive/2018/GCP_CarbonBudget_2018.pdf (Historical cumulative fossil CO_2 emissions by country).

[27] Yann Robiou du Pont, *et al., Equitable mitigation to achieve the Paris Agreement goals*, 7 Nature Climate Change 38 (2017), and Supplemental Tables 1 and 2. Quantities measured in GtCO_2eq include the mass emissions from CO_2 as well as the other well-mixed GHGs (CO_2, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and SF_6) converted into CO_2-equivalent values, while quantities measured in GtCO_2 refer to mass emissions of just CO_2 itself.

[28] Robiou du Pont *et al.* (2017) averaged across IPCC sharing principles to estimate the U.S. carbon budget from 2010 to 2100 for a 50 % chance of returning global average temperature rise to 1.5°C by 2100, based on a cost-optimal model. The study estimated the U.S. carbon budget consistent with a 1.5°C target at 25 GtCO_2eq by averaging across four equity principles: capability (83 GtCO_2eq), equal per capita (118 GtCO_2eq), greenhouse

$GtCO_2eq$ each year, the remaining U.S. carbon budget compatible with the Paris climate targets is extremely small and is rapidly being expended, highlighting the urgent need for the U.S. to transition from fossil fuels to renewable energy.

The electricity sector, in tandem with the transportation sector, is the leading source of U.S. GHG emissions, making up 25% of total GHG emissions in 2019.[29] Utilities therefore have a unique responsibility to decarbonize their operations and shift away from the fossil fuel energy harming marginalized and vulnerable communities, as well as species. Indeed, earlier this year President Biden issued an Executive Order to transform the entire U.S. electricity sector to be carbon-free by *2035*.[30]

B. Corporate Climate Change Disclosures

More than a decade ago, the SEC issued its initial guidance on climate change disclosures.[31] The 2010 Guidance noted that regulators at all levels of government were beginning to act to address the climate emergency, and recognized the impacts on companies that would come both from those actions, as well as from the on-the-ground impacts companies would be facing in coming years from climate change itself. The Guidance also noted the agency's evolving standards on materiality, explaining "information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision" or would otherwise "alter the total mix of available information," and providing that doubts about materiality should be resolved in favor of disclosure.[32]

Nonetheless, the specific Guidance provided at that time was limited, directing companies to simply consider the extent to which domestic or international legal developments concerning climate change might impact them; whether climate change and reactions to it may pose new risks or opportunities; and the degree to which climate change may physically impact companies, their facilities and their operations. *Id.* at 6,295-97. That is where things have stood domestically until recently.

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development rights (-69 $GtCO_2eq$), and equal cumulative per capita (-32 $GtCO_2eq$). The study estimated the U.S. budget at 57 $GtCO_2eq$ when averaging across five sharing principles, adding the constant emissions ratio (186 $GtCO_2eq$) to the four above-mentioned principles. However, the constant emissions ratio, which maintains current emissions ratios, is not considered to be an equitable sharing principle because it is a grandfathering approach that "privileges today's high-emitting countries when allocating future emission entitlements."

[29] U.S. Env't Prot. Agency, *Sources of Greenhouse Gas Emissions*, EPA, https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (2021).

[30] Exec. Ord. on Tackling the Climate Crisis at Home and Abroad, No. 14,008, 86 Fed. Reg. 7619, §§ 201 and 205(b)(i) (Jan. 27, 2021) ("Biden Order") (Jan. 27, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/.

[31] Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010).

[32] *Id.* at 6,293.

In the meantime, however, there have been important international developments in this space. In 2015, the Financial Stability Board created the Task Force for Climate-Related Financial Disclosures (TCFD), which issued climate-related financial disclosure recommendations in 2017.[33] The recommendations cover four key disclosure areas: (a) company governance around climate-related risks and opportunities; (b) the actual and potential impacts of climate risks and strategies to address them; (c) the way the company identifies and manages those risks; and (d) the metrics and targets the company uses to assess and manage those risks and opportunities.[34] Over the past few years hundreds of organizations and companies have endorsed this approach.[35] Countries around the world are now working towards implementing mandatory disclosures relying on the TCFD framework, including New Zealand[36] and the United Kingdom.[37] The European Union (EU) has similarly issued disclosure guidelines based on the TCFD framework in conjunction with a Non-Financial Reporting Directive that requires companies to report on Environmental, Social, and Governance (ESG) issues.[38] The EU is currently reviewing its non-financial disclosure reporting rules in anticipation of a potential global agreement requiring all listed companies to disclose climate-related risks in a standardized way, expected to emerge this November, 2021 at the upcoming United Nations Climate Change Conference (UN COP26) in Glasgow, Scotland.

Accordingly, the United States currently lags behind the international community and peer governments in climate change disclosures. Last May, the Investor-as-Owner subcommittee of the SEC Investor Advisory Committee recommended that it is time for the SEC to mandate climate change disclosures.[39] The Committee explained that ESG disclosures like those related to

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[33] *See* Task Force on Climate-Related Fin. Disclosures (TCFD), *About Page*, TCFD, https://www fsb-tcfd.org/about/#history .

[34] *See* TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures*, TCFD, 14 (2017), https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.

[35] TCFD, *2020 Status Report*, TCFD, 3 (2020), https://assets.bbhub.io/company/sites/60/2020/09/2020-TCFD_Status-Report.pdf.

[36] Honorable James Shaw. "New Zealand first in the world to require climate risk reporting." *New Zealand Government,* 15 Sept., 2020, https://www.beehive.govt nz/release/new-zealand-first-world-require-climate-risk-reporting; "Mandatory climate-related disclosures," *New Zealand Ministry for the Environment,* April 2021, https://environment.govt nz/what-government-is-doing/areas-of-work/climate-change/mandatory-climate-related-financial-disclosures/.

[37] Kirstin K. Gruver & Leah A. Dundon, "Mandatory Climate Risk Disclosures in the UK by 2025." *The Nat'l L. Rev.*, 7 Dec,. 2020, www natlawreview.com/article/mandatory-climate-risk-disclosures-uk-2025.

[38] Financial Stability, Financial Services and Capital Markets Union, *Commission Guidelines on non-financial reporting: Supplement on reporting climate-related information (2019/C 209/01),* 20 June, 2019, https://ec.europa.eu/info/publications/non-financial-reporting-guidelines_en#climate.

[39] U.S. Sec. Exch. Comm'n, *Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Relating to ESG Disclosure*, U.S. Sec. Exch. Comm'n (May 14, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf . The Committee more broadly addressed ESG disclosures, of which climate change disclosures are a part.

climate change have become highly material to investors, who are increasingly concerned about these matters in making investment decisions, and noted that companies are already making many types of disclosure at the demand of investors and others, creating a problematic "lack of consistent, comparable, material information in the marketplace [leaving] everyone [ ] frustrated – issuers, investors, and regulators." *Id.* at 5. Finally, the Committee emphasized the importance of the United States taking "*the lead" on these disclosures* globally, as "US capital markets are the largest and deepest in the world." *Id.* at 9 (emphasis added).

In May of this year, President Biden issued a new Executive Order (EO) on "Climate-Related Financial Risk."[40] The EO directs the National Economic Council and related White House offices to develop a strategy by September, 2021 addressing, *e.g.,* climate change financial risks to, and disclosures for, the federal government, and areas where private investment can assist in meeting the Nation's decarbonization goals. The EO further directs the Secretary of Treasury to prepare a report by November, 2021, addressing, *inter alia*, "the necessity of any actions to enhance climate-related disclosures by *regulated entities* to mitigate climate-related financial risk to the financial system or assets," and "processes to identify climate-related financial risk to the financial stability of the United States." *Id.* (emphasis added).

Against this backdrop, the Commission is asking the public for input on improving the agency's climate change disclosure regime. Recognizing that investor demand for disclosures has "grown dramatically," the agency is considering new disclosure requirements and frameworks. Among the issues the SEC has asked the public to address, and to which we will respond below, are: whether there should be unique reporting standards for particular industries (Question 4); whether to adopt existing frameworks, and the relationship with international standards (Questions 5 and 9); whether companies should disclose their internal governance and oversight of climate change issues (Question 8); what enforcement and verification mechanisms should be considered (Questions 10 and 11); and whether to allow a "comply or explain" approach (Question 12).

Discussion

A. The SEC Should Adopt Unique Reporting Requirements For Utilities, Including Robust Requirements That Will Serve As An International Benchmark (Questions 4, 5 and 9).

Utilities are unique among companies regulated by the SEC, for multiple reasons. First, in light of their often state-sanctioned monopoly status, they have a unique quasi-public responsibility to provide reliable energy services in the face of both short-term climate threats like severe weather and wildfires, and longer-term threats like sea level rise and higher temperatures. That status also elevates their responsibility to rapidly transition from fossil fuels, which is fueling the climate emergency impacting their captive ratepayer customers.

[40] White House, Exec. Order on Climate-Related Financial Risk (May 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/.

Moreover, utilities are unique in terms of their heavy fossil fuel investments, and substantial contribution to the climate emergency.[41] They therefore must play a vital role in the clean and renewable energy transition, as we move towards heat pumps, electric vehicles, distributed energy resources and other measures desperately needed to reduce GHG emissions. Indeed, utilities across the country have announced clean energy transition ambitions,[42] and as discussed further below, it is thus vital that SEC disclosures not only address the climate change *impacts* of, and risks to, utilities' current and planned operations, but also the credibility of their renewable energy transition commitments.

Accordingly, as discussed below, and in answer to the Question 4, SEC should develop unique climate change reporting requirements for utilities. These requirements should be at least as strong as the TCFD recommended disclosures and other international and state initiatives specifically addressing utilities.[43] They should also be reported by utilities in their periodic financial filings, rather than only in separate sustainability or climate-related reports, and should specifically address the following matters, among others.

1. Disclosures Must Cover Both Utility Holding Companies And All Their Subsidiaries.

Utility companies are often owned by holding companies that do not themselves operate utility assets, thereby potentially shielding important information from disclosures.[44] It is therefore imperative that utility disclosures include both holding companies, and all subsidiaries, requiring rigorous disclosures of the unique information relevant for utility investors, including fossil fuel assets, scope 1, 2, and 3 emissions, transition risks, and all other relevant aspects of the TCFD Framework that apply to both utility holding companies and their subsidiaries.

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[41] Beth Young, *et al.*, *Climate Risk Disclosure in SEC Filings*, Ceres and Environmental Defense Fund, June 2009, https://www.greenbiz.com/sites/default/files/document/Ceres_Climate_Risk_Disclosure_in_SEC_Filings.pdf.

[42] *See, e.g.,* WRI, *2019 Was a Watershed Year for Clean Energy Commitments from U.S. States and Utilities*, https://www.wri.org/insights/2019-was-watershed-year-clean-energy-commitments-us-states-and-utilities (summarizing utility clean energy announcements).

[43] *See* TCFD, "Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures," Task Force on Climate-Related Fin. Disclosures 67-69 (June 2017), https://assets.bbhub.io/company/sites/60/2020/10/FINAL-TCFD-Annex-Amended-121517.pdf; *see also* World Bus. Council for Sustainable Dev. (WBCSD), *TCFD Electric Utilities Preparer Forum: Disclosure in a time of transition: Climate related financial disclosure and the Opportunity for the electric utilities sector* (July 2019), https://docs.wbcsd.org/2019/07/WBCSD_TCFD_Electric_Utilities_Preparer_Forum.pdf (calling for unique utility sector disclosures); Inst. for Pol'y Integrity, Env't Def. Fund, and Colum. L. Sch.,. *Joint Comments on Utility Climate Risk Disclosure (*2020), http://blogs.edf.org/climate411/files/2020/12/Joint-Comments-on-Utility-Climate-Risk-Disclosure.pdf (recommending utility climate change disclosures in New York).

[44] *See, e.g.,* Duke Energy, About us, https://www.duke-energy.com/Our-Company/About-Us (Duke is "one of the largest electric power holding companies in the U.S.").

2. Disclosures Must Address All Relevant Aspects Of The Energy Transition.

As discussed above, utilities are on the front line of the clean and renewable energy transition, as they are heavily invested in fossil fuel assets and must divest themselves of those energy sources while continuing to provide reliable electricity services. They are also subject to an increasing array of transition-related requirements at the federal, state, and local level.

Accordingly, it is crucial that utilities fully disclose the risks and opportunities associated with the renewable and clean energy transition. This must include their plans to divest from, sell off, phase out, and/or manage debt and equity associated with all legacy and newly proposed fossil fuel assets. Indeed, as noted, many utilities have been announcing transition plans. It is therefore vital to investors that utility climate change disclosures provide the requisite details to allow investors to evaluate whether those plans are aligned with climate science, and if so, whether they are being implemented on a timely basis. The disclosures should also address how the companies otherwise intend to manage the decline of their fossil fuel portfolios and deploy truly renewable energy solutions in the midst of the climate emergency.

Finally, presumably to protect their fossil fuel investments, utilities – and their trade associations – have been highly active in advocacy against the clean energy transition. For example, the Edison Electric Institute ("EEI"), the trade group for electric utilities, has relied on utility funding to train utility executives to oppose clean energy policies; funds groups fighting against clean air and clean water regulations; and worked to sow doubt about climate science.[45] It is therefore also vital for utilities to disclose their expenditures on advocacy – including marketing, public relation, regulatory advocacy and litigation – designed to protect their fossil fuel investments and stifle the renewable energy transition, both directly and through their trade groups.[46] Those expenditures exacerbate the climate change risks these companies will face in the future – particularly to the extent they are successful in delaying the renewable energy

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[45] *See* Petition for Rulemaking to Amend The Uniform System of Accounts' Treatment of Industry Association Dues, RM21-15, Ctr. for Biological Diversity 9-13 (Mar. 17, 2021), https://elibrary ferc.gov/eLibrary/filelist?document_id=14937463&optimized=false. The Petition details how electric utilities force customers to finance anti-environment trade groups. Disclosing the relationships between utilities' political activities and their climate risk mitigation and adaptation strategies will increase much-needed transparency in this area as well as highlight ways in which utilities' political activities may ultimately undermine and pose further risk to their business model in a decarbonizing economy.

Exhibit B to the Petition provides details on other utility-related advocacy against the clean energy transition. The Petition is currently pending before the Federal Energy Regulatory Commission.

[46] *See, e.g.,* Ysabelle Kempe, *Fossil Fuel Interests Caught Peddling Propaganda to Schoolchildren: One booklet was titled, "Natural Gas: Your Invisible Friend,"* Mother Jones, May 21, 2021, https://www.motherjones.com/environment/2021/05/fossil-fuel-industry-natural-gas-propaganda-massachusetts-schools/; Steven Mufson, *The battle over climate change is boiling over on the home front*, The Washington Post (Feb. 23, 2021), https://www.washingtonpost.com/climate-environment/2021/02/23/climate-change-natural-gas/; Sammy Roth, *SoCalGas Shouldn't Be Using Customer Money to Undermine State Climate Goals, Critics Say*, L.A. Times (Nov. 22, 2019), https://www.latimes.com/environment/story/2019-11-22/socalgas-climate-change-customer-funds (discussing gas association activities); Emily Holden, *Revealed: How the Gas Industry is Waging War Against Climate Action*, The Guardian (Aug. 20, 2020), https://www.theguardian.com/environment/2020/aug/20/gas-industry-waging-war-against-climate-action.

transition, thereby increasing the expenses they will experience in seeking to provide reliable service under more extreme weather conditions.

3. Disclosures Must Address Environmental and Energy Justice-Related Matters.

Although current ESG and climate reporting practices align with disclosure around risks related to environmental and energy justice and equity considerations, to date neither the SEC nor international frameworks such as the TCFD have meaningfully addressed this aspect of climate disclosures. The SEC should therefore lead in this area, delivering on President Biden's commitment to advance climate disclosure and policy change "while accounting for and addressing disparate impacts on disadvantaged communities and communities of color."[47]

In particular, the SEC should establish clear guidance around utilities' disclosure of the environmental justice and climate equity-related risks to environmental justice communities associated with their operations and the operations.

Additionally, as the Nation experiences more extreme weather conditions fueled by the climate emergency, the connection between climate change and maintaining utility service is an increasingly important issue. As outlined below, the SEC should also consider whether utilities should disclose information related to energy affordability, insecurity, arrearages and shut-offs, and how their operations disproportionately impact environmental justice communities in climate disaster situations.[48]

This may include, for example:

a. the health impacts and GHG and other pollutant emissions associated with utility fossil fuel assets over the course of those assets' full lifetimes, including upstream methane emissions, and the corresponding health risks they pose to environmental justice communities;

b. the economic impacts, including rate increases, associated with the build-out and maintenance of utility fossil fuel assets, and how such costs are passed onto environmental justice communities;

c. utility plans to retire and/or sell off and/or divest their fossil fuel assets (or lack of plans to do so), and how those plans will affect environmental justice communities;

d. the scope, accessibility and affordability, of renewable energy and distributed energy, storage, and efficiency options offered to environmental justice communities;

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47 *See supra* n.40.

48 *See* Yessenia Funes, "REPORT: Utility Shut-Offs Disproportionately Impact Black Americans and the Poor," Color Lines, 3 April, 2017, https://www.colorlines.com/articles/report-utility-shut-offs-disproportionately-impact-black-americans-and-poor.

e. the ways in which justice and equity considerations factor into business decisions, including decisions regarding energy generation siting and transmission line siting;

f. the amount of utility disconnections either made for nonpayment or climate disaster-related issues, and the demographic (race, income level, etc.) data tied to disconnected households;

g. the ways in which justice and equity considerations factor into decisions regarding disconnections and reconnections in climate disaster situations of blackouts; and

h. avenues for environmental justice communities to provide input on utility services (including the scope and affordability of energy source options made available to them), how often communities use such avenues where/when they exist, and how utilities respond to communities' input when received.

B. Disclosures Must Address Governance And Oversight Related To Climate Change Issues (Question 8)

It is also vital that the climate change disclosures address key corporate governance and oversight issues related to climate change, particularly for utilities. These disclosures should address at least the following matters:

1. Executive Compensation

Utilities should report whether they have tied executive compensation to their progress on such matters as reducing operational emissions, achieving decarbonization and/or climate action goals, and otherwise supporting the clean energy transition.[49] If utilities do not specifically link climate-related progress to executive compensation in any way, they should at minimum explain why they do not do so, and whether/how such compensation interacts with utility-specific and sector-wide environmental sustainability as well as national climate commitments.

2. Sustainability Governance

Consistent with the TCFD Framework, utilities should report on the internal programs and strategies they have developed to address both their clean and renewable energy transition and their exposure to climate change risks. Thus, for example, the TCFD Framework calls for identifying "whether the organization has assigned climate-related responsibilities to management-level positions or committees; and, if so, whether such management positions or committees report to the board or a committee of the board and whether those responsibilities include assessing and/or managing climate-related issues," "a description of the associated

[49] *See* Shai Ganu, and Phillipp Geiler, *Combating climate change through executive compensation*," Willis Towers Watson, 30 Sept., 2020, https://www.willistowerswatson.com/en-US/Insights/2020/09/Combating-climate-change-through-executive-compensation (discussing the effectiveness of tying executive pay to progress on decarbonization).

organizational structure(s)," the "processes by which management is informed about climate-related issues," and "how management (through specific positions and/or management committees) monitors climate-related issues."[50]

3. Political And Advocacy Activities

Utilities and their holding companies also make decisions concerning other companies they own or have a governance role over. Accordingly, climate change disclosures should also include material information on utility behavior with respect to this aspect of their activities, similarly reporting on their decisions related to fossil fuel investments and the clean energy transition, as well as climate risks, with respect to these outside entities.

As noted above, utilities should also disclose the advocacy activities they undertake either directly or indirectly as part of their strategies to address climate change-related risks. This would include, for example, their memberships in trade groups and/or political associations advocating for fossil fuel interests and/or against environmental regulations or clean energy-related initiatives.[51]

C. The SEC Should Reject A "Comply or Explain" Disclosure Regime (Question 12)

We urge the Commission to reject a "comply or explain" approach to disclosures, under which a company would be free to decline to provide material information and could instead simply provide an explanation for why the information is being omitted. The TCFD Framework and the many other domestic and international initiatives on this issue make it clear that robust climate change disclosures are vital to informing investors and the public about company activities related to this critical issue. Moreover, it is evident that given the sensitivity of these disclosures – particularly for utilities – any loophole such as a "comply or explain" mechanism risks allowing these companies to avoid these very disclosures. In short, utilities – who are presenting themselves as climate leaders even as they work to protect their fossil fuel investments and infrastructure against the urgent demand and need for a renewable energy transition – must be mandated to disclose all this information if there is any hope that these disclosures will serve their vital purposes of meaningfully informing shareholders to enable them to make informed investment decisions.[52]

There are a host of areas where companies are simply required to report material information, and we believe that given the importance of climate change disclosures there is simply no basis

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[50] *See supra* n. 34 (TCFD recommendations at 31).

[51] *See supra* n. 45.

[52] *See,* e.g. Climate Disclosure Standards Bd., *CDSB warns a comply or explain approach is not sufficient in reaction to UK FCA's Proposals to enhance climate-related disclosure by listed issuers and clarification of existing disclosure obligations* (Mar. 10, 2020), https://www.cdsb net/listing-requirement/1019/cdsb-warns-comply-or-explain-approach-not-sufficient-reaction-uk-fca%E2%80%99s (detailing reasons a comply or explain approach is insufficient).

to allow utilities to avoid any of these disclosures through a "comply or explain" regime. Shareholders' ownership stake in corporations demands transparency from the company's officers about all decisions related to the climate.

D. The SEC Should Adopt Rigorous Enforcement and Verification Mechanisms (Question 10 and 11)

As President Biden's recent EO makes clear,[53] climate-related financial risks are growing, and the SEC must take all reasonable steps to both require robust disclosures, while also ensuring that companies – and particularly utilities – comply with those new requirements.

Accordingly, we urge the Commission to impose strict enforcement and verification mechanisms to ensure that utilities do not skirt their climate change disclosure responsibilities. When companies fail to properly report essential revenue or expense information, the SEC takes enforcement actions to both ensure compliance and deter other misconduct.[54] Similarly, the Commission should adopt a system that will ensure that all relevant climate change-related disclosures are promptly and fully provided to allow investors and the public to have all the information they need to make informed investment decisions.

Conclusion

Consistent with Investor-as-Owner subcommittee's recommendations, it is vital that the Commission develop best-in-class climate change disclosures that are at least as strong – and preferably more robust – than international standards. This should include separate rigorous disclosure requirements for utilities, addressing the matters discussed above.

We appreciate the opportunity to comment on these important matters before the Commission, and look forward to participating in this process as it moves forward. Please do not hesitate to contact us if there is any further information we can provide.

Sincerely yours,

Center for Biological Diversity

[redacted]

/s/ Howard M. Crystal

[redacted]

/s/ Ilana Cohen

[redacted]

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53 *See supra* n.40.

54 *See, e.g.,* U.S. Sec. Exch. Comm'n, Selected Division of Enforcement Accomplishments: December 2016, https://www.sec.gov/enforce/selected-division-enforcement-accomplishments-december-2016-december-2020.