June 14, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Public Input on Climate Change Disclosures

Dear Chair Gensler,

The Energy Infrastructure Council ("***EIC***") is a non-profit trade association of companies that develop and operate energy infrastructure (often referred to as "midstream" operations), including traditional and renewable energy infrastructure companies; investors in energy infrastructure; service providers; and other businesses and individuals that operate in and around the energy industry. The EIC appreciates the opportunity to respond to the U.S. Securities and Exchange Commission's ("***Commission***" or "***SEC***") request for public comment on whether the SEC's current disclosure rules and regulations appropriately address climate change. EIC writes today to provide the Commission with information regarding the work already being undertaken by EIC and our members to develop effective environmental, social and governance ("***ESG***") disclosure and reporting that is responsive to the needs of our members' investors, and to provide the Commission with our views on effective climate change disclosure regulation.

I. EIC Members' ESG Efforts

Our members have been reporting on ESG topics for several years. Many members are not only reporting on ESG matters, but are also proactively addressing them by adopting new technologies, increasing efficiencies and incorporating renewable and alternative energy into their operations, among other actions. In order to build on the efforts of our members, EIC established a board-level working group in 2019 (the "***EIC ESG Working Group***") co-chaired by ESG leaders Alan Armstrong, President and Chief Executive Officer, The Williams Companies, Inc. and Bob Phillips, Chairman, President and Chief Executive Officer, Crestwood Equity Partners LP.

The EIC ESG Working Group's mission is twofold: (i) to provide best practices guidance and resources to assist member companies in their ESG efforts, and (ii) to develop a midstream reporting template that provides meaningful, durable, transparent, quantifiable and comparable metrics that enable investors, regulators and stakeholders to make informed decisions about midstream companies' ESG practices and to assess individual companies' ESG progress based on year-over-year comparisons.

Almost a year in the making, in December 2020, the EIC ESG Working Group, in collaboration with the GPA Midstream Association ("***GPA Midstream***"), released the first-ever Midstream ESG Reporting Template (the "***Reporting Template***"). The Reporting Template is the product of extensive review of leading ESG reporting among EIC and GPA Midstream member companies; organizations involved in the development of ESG reporting frameworks (*e.g.*, the Task Force on Climate-related Financial Disclosures, Sustainability Accounting Standards Board, CDP); companies engaged in ESG reporting and/or ratings (*e.g.*, MSCI, Sustainalytics, Bloomberg, S&P); other energy groups and associations (*e.g*., Edison Electric Institute/American Gas Association, ONE Future); and proxy services firms (*e.g.*, ISS, Glass Lewis). To promote widespread adoption, this collaborative process also involved significant participation from in-house ESG specialists and professionals with operational and technical expertise, as well as the services of a highly respected third-party consultant that specializes in ESG disclosure and reporting. Importantly, to ensure the metrics were meaningful, the EIC ESG Working Group worked closely with, and actively engaged, large asset managers and investors, including Brookfield Asset Management, Chickasaw Capital Management, ClearBridge Investments, Cohen & Steers, DWS, Eagle Global, Goldman Sachs Asset Management, Invesco, Kayne Anderson Capital Advisors, and TortoiseEcoFin. The Reporting Template has received strong support from the investors with whom we engaged, as well as other large energy infrastructure investors (*see* **Appendix A**).

In addition to working toward widespread company and investor adoption, EIC and GPA Midstream are continuing to engage with numerous prominent ESG rating agencies and standard setters to obtain alignment and consistency between the Reporting Template and the various channels through which investors access ESG information for the midstream sector. EIC and GPA Midstream are also continuing to expand investor and stakeholder engagement to ensure that the Reporting Template evolves as the ESG environment and midstream companies' ESG efforts advance.

II. The Role of Disclosure

Over the past few years, many investors and U.S. public companies alike have become increasingly interested in climate change matters and have come to appreciate the unique challenges posed by accurately disclosing the material risks and strategies associated with these matters. Our global society needs to better understand and more effectively address material risks associated with environmental and societal developments and to engage in the arguably harder work of calibrating the balance between environmental and societal considerations where those considerations would prioritize divergent strategies. Corporations have had and will continue to have a role to play in this process.

However, any climate disclosure regime should be guided by the overarching principle that the complex and global tasks of identifying and mitigating climate change-related risks and impacts require both the public and private sectors' efforts, with advancements in our understanding of anticipated climate impacts being led by the scientific community. We must collectively acknowledge that while disclosure can play an important role in providing greater transparency with respect to how we as a society are creating a more sustainable world, disclosure alone cannot, and should not be expected to, solve the entire equation, nor can we expect companies and their investors to be solely responsible for bearing the costs and navigating the complexities of climate impacts. Moreover, while a broader effort by the Commission to require companies to identify and articulate climate hazards in public disclosures may go well beyond the types of information that have traditionally been considered under securities laws, any regulation still must be guided by the central purpose of the SEC's reporting regime, which is to provide investors with a focused presentation of material business considerations for the purposes of informing investors' investment and voting decisions.[1] While we acknowledge that the SEC's statutory authority is not strictly limited to or qualified by materiality, we note that the Commission's mandate is clearly tied to the proper protection of investors. And we respectfully posit that any disclosure regulation that is clearly tied to the proper protection of investors will effectively balance the likelihood that the underlying information will be used by the reasonable investor in making his or her investment and voting decisions with the costs imposed on the company, and therefore its investors, in complying with the regulation.

While there are certain groups of investors who are particularly focused on climate change-related matters, we believe that investors at large remain attentive to a mix of material information and that the purpose of federal disclosure regulation continues to be providing investors with the information they need to make their investment and voting decisions. We note that EIC members' experience in discussing capital allocation priorities, capital investment opportunities and the rationale of investment decisions with sophisticated third parties, such as commercial banks, investment banks, ratings agencies and equity investors, is that those lenders and investors do not want our members to pursue ESG initiatives that are not otherwise economically justified. With respect to investors that are uniquely focused on climate change-related matters, we would prefer continuing to allow individual companies and investors to engage with each other in effective and productive ways that do not involve increasing the compliance costs borne by all investors.

We appreciate the Commission's attention to our comments below.

III. The Complexities of Creating Effective Climate Change Disclosure Regulation

In considering new regulations regarding material climate change considerations, there are a number of significant complexities that could make any promulgated climate disclosure regulations subject to legal challenge and/or significantly affect the long-term efficacy of such disclosures. To create an effective climate disclosure regime that provides transparent, comparable information about issuers' climate risks, we believe the Commission must consider the following factors.

A. ***Delegation of the Commission's Authority Is Impermissible***. We note that the Commission has questioned the advantages and disadvantages of drawing on existing frameworks and whether the Commission should designate a climate or ESG disclosure standard setter. We would distinguish the concept of drawing from existing frameworks, including our Reporting Template, from effectively delegating the Commission's rulemaking authority to a third party. We discuss existing frameworks in more detail below, but here we note that the Commission does not have legal authority to delegate its rulemaking powers to any other entity,[2] and that federal agencies generally cannot "sub-delegate" their authority to create rules or standards to outside groups absent an affirmative authorization from Congress.[3] To the extent that the Commission seeks to have an outside standard-setting organization craft rules that have the prospective force of law, such delegation would require an act of Congress and would be constrained by the non-delegation

[1] *See* 85 Fed. Reg. 63,726, 63,727 (Oct. 8, 2020) (providing that, "Our disclosure requirements, while prescriptive in some respects, are rooted in materiality and facilitate an understanding of a registrant's business, financial condition and prospects through the lens through which management and the board of directors manage and assess the performance of the registrant").
[2] 15 U.S.C. § 78d-1(a).
[3] *See U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004).

doctrine.[4] That said, agencies such as the Commission may give legal effect to standards developed by outside groups if they adopt those standards following a notice-and-comment rulemaking and their exercise of robust, independent judgment as to what particular standards should have the force of law. Indeed, agencies are arguably required to credit industry consensus standards in at least some circumstances.[5] Although federal agencies are technically free to use notice-and-comment procedures to adopt standards developed by outside standard-setting groups without regard to the particular process used by the outside group to develop those standards, any adoption of third-party disclosure requirements must comport with the requirements of the Administrative Procedure Act.[6] Moreover, agencies do not have the power to give prospective force of law to any *seriatim* "updates" or improvements to standards that may be developed by the outside standard-setting body after the original standards are incorporated into federal law by rulemaking; instead, any "updates" to the standards could carry the force of law only if they were adopted in an independent rulemaking proceeding.

To the extent that the Commission elects to adopt third-party standards in any new climate disclosure requirements, it must ensure that the standards it adopts are reasonable, lawful, supported by substantial evidence, and considerate of all dimensions of the problem with which the agency is confronted.[7] Any action by the Commission to adopt a set of third-party standards without following the proper process would be arbitrary and capricious. Moreover, we note that while many industries and trade organizations, including EIC, have undertaken the hard work of creating effective templates to report on ESG and climate change factors utilizing the input of their members and their investors, we believe and are concerned that some third-party standard providers are often considering input from a limited scope of participants who do not necessarily reflect the "reasonable investor." It is also our experience that some third-party providers, who we would note often remain free of meaningful and arguably much-needed oversight, create proprietary assessment methodologies more in response to their business models than in response to a desire to understand a particular industry or company or to promulgate rules to enhance the transparency of meaningful and material climate change-related factors.

B. ***Overly Prescriptive Requirements Will Be Both Ineffective and Prohibitively Costly for Companies***. We recommend that the Commission exercise caution in adopting overly prescriptive disclosure requirements that are unlikely to be adequately tailored to specific companies' material climate change matters and processes. Even within industries, companies' unique operations, geographic locations, or other factors may substantially alter their exposure to climate-related factors in such a way that requiring standardized disclosure of detailed and specific climate change-related data, and the related internal disclosure processes, without allowing customizable disclosures may result in both over- and under-inclusive reporting. Prescriptive requirements will

[4] *Cf.* 15 U.S.C. § 77s(b)(1) (empowering the Commission to recognize certain "*accounting* principles" as "'generally accepted' for purposes of the securities laws" if they are set by a "standard setting body" that meets certain listed criteria, such as the Financial Accounting Standards Board (emphasis added)).
[5] OMB Circular A-119.
[6] 5 U.S.C. § 706(2).
[7] An agency's decision-making process must consider all "important aspect[s] of the problem." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) ("[T]he court must consider whether the decision was based on a consideration of the relevant factors."); *see also Overton Park*, 401 U.S. at 416 (the relevant inquiry under the APA is whether the agency's "decision can reasonably be said to be within [the] range" of choices that can lawfully be made, and a reviewing court "is not empowered to substitute its judgment for that of the agency").

fail to give companies the latitude needed to provide targeted material information to investors about individual companies' climate change business considerations, and will divert companies' time and resources away from their efforts to create meaningful, tailored climate change disclosure in response to their investors' ESG and climate change inquiries. Requiring compliance with inflexible metrics is also likely to be exceedingly costly and burdensome for public companies of all sizes to adopt.

C. ***Determining Materiality in the Context of Climate Change Matters Is Uniquely Challenging***. We note that the Commission asked whether climate change disclosure rules should be incorporated into existing rules and whether the Commission should adopt specific metrics and make regulatory updates to companies' requirements with respect to both disclosure controls and procedures and internal control over financial reporting requirements.

We believe that it would be premature to attempt to incorporate climate change considerations into Regulation S-X or other accounting-related requirements, or to treat climate and financial data consistently in internal control over financial reporting requirements without adequate safe harbor protections. Implementing such requirements may: (i) ignore the realities of the availability and accuracy of climate data; and (ii) subject companies to significant litigation vulnerabilities without adequate consideration of the complexities of creating and assessing climate data and determining whether and to what extent it is, or is not, material; this could in turn inhibit companies from engaging in fulsome disclosure in this area.

a. Realities of Climate Data Availability & Accuracy.

The availability and accuracy of climate data continue to create significant hurdles for many companies in creating processes for measuring and reporting on their climate-related risks and impacts. The data currently used in climate impact inventorying and climate risk modeling is subject to data gaps, including both equipment/asset-level data and global and sectoral climate data. Each of these data gaps makes it difficult to assess individual company impacts and their anticipated climate risks. To overcome such data gaps, the use of estimates is common and widespread. For example, in the midstream industry, EPA's regulatory requirements for reporting greenhouse gas emissions rely upon emissions factors, rather than direct measurement of emissions.[8] The use of emission factors in the EPA's reporting rules is a pragmatic acknowledgement that the technologies to continuously measure direct emissions are not practicably available to the midstream industry.[9] Measuring the full scope of any company's carbon footprint would also require the incorporation of scope 2 emissions (from purchased electricity, steam, heat, or cooling) and scope 3 emissions (from use or processing of sold products). To date, EIC member companies have reported on their direct emissions, but among midstream companies, reporting scope 3 emissions remains rare specifically because of the complexity of the process, which requires the extensive use of estimates and assumptions. It is fair to say that many companies reporting scope 3 emissions today will discover at some future point that portions of their estimates and assumptions were incorrect through no fault of their own.

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[8] *See* 40 C.F.R. Subpart W; Table W-1A to Table W-7.

[9] *See* 40 C.F.R. § 98.233 allowing calculation of emissions to use either "a flow or volume measurement system that corrects to standard conditions and determine the flow or volume at standard conditions" or "average atmospheric conditions or typical operating conditions as applicable to the respective monitoring methods."

Given the challenges around data availability and integrity and the lengthy timelines that can be associated with climate change matters, it also can be very challenging for companies to establish a consistent approach to assessing the materiality of these matters. And while materiality may not be a factor the Commission is required to consider in establishing regulation, it is undoubtedly something the boards of directors of public companies must consider in assessing how and when to disclose on ESG matters or update previously disclosed ESG data. Long-term climate projections can be subject to significant uncertainty ranges,[10] especially when considering the predictions of accelerating climate risks and impacts. Given the non-linearity of such projections, even the leading climate modeling is currently subject to significant limitations with respect to capturing and forecasting accurate climate risks for specific geographies or individual companies.[11] For many companies, their climate change-related risks and impacts, and the degree to which those matters are material, are likely to unfold over a longer period of time than the risks and strategies that have traditionally been viewed as being within the scope of a company's control and subject to reporting requirements. Until such time when downscaled climate change data—which is necessary to accurately assess asset-level climate risks—is more widely available and more widely confirmed, requiring companies to reflect their climate change risks or impact in financial information, or requiring companies to comply with prescriptive requirements such as specific metrics, would involve an impractical number and degree of estimates and assumptions and result in an unmanageable level of liability for many, if not most, companies to the extent their good faith estimates and assumptions prove to be incorrect.

b. Potential Vulnerabilities Created by Comprehensive Disclosure & Climate Target Requirements.

The processes by which a company can accurately measure the full scope of its carbon footprint and identify, measure and mitigate its climate change risks remain far more imprecise than the processes by which a company can currently account for other, measurable financial aspects of its strategy and operations. While EIC and its member companies continue to work to develop reliable methods to report climate and emissions data in voluntary reports that investors request, this data does not yet rise to the level of accuracy and precision that would be required to be addressed under the same framework as the financial accounting information that is filed under Regulation S-X. In addition, as discussed above, the timelines associated with assessing climate change-related matters can be significantly longer than the timelines necessary for assessing and reporting on company financial information and often include a uniquely complex level of estimates and assumptions. Requiring companies to issue prescriptive, quantitative climate change disclosures on the same timeline as their annual reports on Form 10-K would be prohibitively costly, and risky, for companies to comply with. Such disclosures require the preparation of large

[10] *See, e.g.*, Matthew Collins *et al.*, *Long-term Climate Change: Projections, Commitments and Irreversibility*, *in* Climate Change 2013: The Physical Science Basis – Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Thomas F. Stocker *et al.*, eds., 2013) 1029, 1036–1040, *available at* https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter12_FINAL.pdf.

[11] While various parties may desire companies to disclose on detailed, precise information produced by climate models, there are unfortunately very real limitations on what current technical models can achieve. Climate analytics is still a relatively immature field, with significant questions in terms of quality control, data availability, and data resolution, among others. *See, e.g.*, Tanya Fielder *et al.*, *Business Risk and the Emergence of Climate Analytics*, 11 Nature Climate Change 87 (2021). In most instances, these models are limited to providing global information, showing general regional variations, and do not have access to the substantial quantities of quality data required to provide information at a greater level of detail.

quantities of complex information that may by itself take several months to collect, verify, and analyze; the timeframes may be longer for more complex disclosures. There is a reason why so many companies issue their sustainability, ESG and climate change disclosures in their third or fourth quarter.

Under Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934, companies' principal executive and financial officers must (i) certify to the design and effectiveness of their disclosure controls and procedures and the design and status of their internal control over financial reporting, and (ii) that the information in their annual report fairly presents, in all material respects, the financial condition and results of operations of their company. However, companies and investors alike are still navigating their processes for identifying climate impacts and assessing climate risks, and executives cannot reasonably certify to any controls or internal audit processes with respect to, or to the accuracy of, such climate inventories or projections until the process of developing these estimates becomes more standardized.

In addition, while several assurance models exist to assess non-financial information,[12] these models generally provide less assurance than historic audit models and cannot be truly compared to the current audit model. The limited assurance model is the most common assurance model used in sustainability and ESG reporting today. To achieve a reasonable level of assurance that is consistent with financial reporting, companies would incur significant costs and find immediate implementation difficult given the additional time needed to design, document and implement an effective control environment for climate change data. Additionally, existing assurance models focus primarily on the historical sustainability data and are not designed to properly address forward-looking climate-related disclosure. Requiring disclosure and certification and establishing internal controls or audit requirements with respect to such information will limit a company's discretion to balance its own need to continue assessing, managing and disclosing information about climate risks and to determine the materiality of its available information. If companies are required to respond to quantitative or prescriptive qualitative disclosure requirements, the risk of there being this type of "materiality gap" is compounded, because investors will likely assume that companies' responsive disclosures are material, even if companies are merely responding to the requirement and would not otherwise consider the information to be material. As a result, introduction of mandatory attestation requirements for sustainability reporting would be premature at this time.

While companies are already required by SEC guidance to reflect certain material climate change risks in their disclosures, together with other material business risks,[13] materiality is often judged retroactively in court by the occurrence or non-occurrence of actual events. Although forward-looking statement disclaimers provide some buffer as to the accuracy of future expectations, requiring disclosure of immature, uncertain or widely variable climate projections and their attendant risks on reporting companies without the protections afforded by robust safe harbor provisions could effectively require companies to create potentially materially misleading

[12] Examples of such models include AT-C 210 (AICPA clarified standards), AA1000AS (AccountAbility standards) and ISO 14064-3.

[13] The *Commission Guidance Regarding Disclosure Related to Climate Change* issued in February 2010 discusses existing requirements under Items 101, 103, 303 and 503(c) of Regulation S-K that have implications for disclosing material climate change matters.

disclosures, inevitably subjecting companies to shareholder litigation when they are unfairly judged by the actual events taking place and data available at the time of such litigation.

It would also be premature to adopt rules requiring companies to adopt specific climate change metrics or goals (including with respect to executive compensation). Requiring a company to establish a certain climate impact-reduction goal, for example, a 5% reduction in operational emissions by a set date as compared to 2010 levels, could limit a company's operational flexibility and substitute its business strategy for that of the regulator. Further, metrics and goals likely to be the most useful differ not only from industry to industry but also from company to company. Instead, the climate change metrics and goals that are most meaningful for a particular company are likely to be determined by the company's processes for producing its services or products; the relationship between those processes; the company's workforce; the company's supply chain, including the company's proximity to its supply chain and its flexibility in identifying new suppliers; the company's options for delivering its services or products; and the methods by which the company's customers consume its services or products, among other factors. Therefore, while we do not believe that prescriptive requirements will ever be appropriate, we would note that the current challenges around data availability and integrity and the lengthy timelines that can be associated with climate change matters would make specific climate change metrics or goals substantively meaningless for the purposes of comparing companies to each other or even comparing a single company's performance over time.

IV. Creating Effective Climate Change Disclosure Regulation

A. ***Summary***. While there are a number of complexities that contribute to a particularly challenging environment in which to create meaningful climate change-related disclosure regulation, we believe that there is a path forward that would be both appropriate for U.S. public companies (across all Standard Industrial Classifications) and effective in better equipping the SEC to review and address climate change-related matters for the entire breadth of the economy including producers, manufacturers, service companies and consumers. Based on our experience and our members' engagement with their investors, we believe that effective climate change disclosure regulation would be defined by:

1. A principles-based approach that acknowledges the uniqueness of the subject matter and the SEC's recent moves towards more principles-based disclosure that includes:
    a. A requirement that companies provide a description of how they oversee their material climate change-related matters, including emissions and supply/demand fundamentals for raw materials used in producing and manufacturing activities;
    b. A requirement that companies provide a description of material climate change-related matters, including, but not limited to, material climate change risks, opportunities and strategies;
    c. The flexibility to use, but not the requirement to use, an appropriate and commonly adopted framework for disclosing such material climate change-related matters and a brief description of why the company has chosen the specific framework; and
    d. A requirement that if a company publicly adopts a climate change-related goal, it will summarize its high-level plan for achieving that goal and provide annual updates on its progress towards such goal.

2. Permitting such disclosure to be "furnished" and not "filed" in order to recognize the challenges of assessing the materiality of climate change matters and the significant number of estimates and assumptions that are necessary to disclose climate change-related matters;

3. Providing a safe harbor that recognizes the unique complexities that still exist with respect to the availability and veracity of climate change data;

4. Permitting such disclosure to be provided in any Regulation FD compliant manner at any time during the company's fiscal year; and

5. Providing adequate time for companies to implement the new requirements and recognizing that larger companies are likely able to comply earlier while smaller organizations may need more time to comply.

B. ***Detailed Recommendations***

Principles-based disclosure. The Commission reiterated its commitment to principles-based disclosure as recently as November of last year when the SEC adopted amendments to modernize and enhance certain financial disclosure requirements in Regulation S-K. No other topic is more appropriately addressed by a principles-based approach than the topic of climate change. Adopting a principles-based approach necessitates that the Commission promulgate any new climate disclosure requirements as revisions to Regulation S-K or through the creation of new stand-alone climate change disclosure regulations. Because we believe that the interests of issuers and shareholders are not best served by requiring climate change disclosure regulation in periodic filings, we believe that a separate new regulation is the best approach to providing investors with appropriate climate information. However, if the Commission does decide to reflect any new climate disclosure regulation through revisions to Regulation S-K, we recommend that the Commission carefully consider how such regulations are implemented with respect to the timing of disclosures and whether such disclosures are deemed to be "filed" or "furnished," as discussed in more detail below.

Board oversight of material climate matters. Within the context of a principles-based approach it would be appropriate for the Commission to adopt regulation to require public companies to describe their approach to the oversight of material climate change-related matters. Consistent with existing disclosure requirements for corporate governance, board structure and risk oversight, and based on the experiences of our members and their conversations with investors, this disclosure would be both useful for investors and cost appropriate for companies. Moreover, in the experiences of our members, board oversight of ESG matters remains one of the most consistent topics investors raise for engagement.

Material climate change-related matters. We believe the Commission could codify its existing guidance on climate change matters and expand that guidance to more clearly address material climate change-related risks, opportunities, strategies and impacts. We also believe that the Commission could fairly require companies to disclose how their oversight of material climate change-related matters and material climate change-related risks, opportunities, strategies and impacts have materially changed over time once companies have made at least one year of comparative disclosure. This approach would balance the desire to provide investors with key climate change-based information that may be important to their investment and voting decisions with the flexibility companies need to navigate the complexity of reporting on climate change-related matters. We also note that while it would be appropriate for companies to disclose the existence of any connections between executive or employee compensation and climate change risks and impacts under these suggested requirements, we do not think it would be appropriate for the Commission to specifically require that companies adopt such practices.

The use of third-party frameworks. While we believe that the Commission should permit companies the flexibility to use third-party reporting frameworks, including our Reporting Template, to comply with any regulations the SEC adopts, we do not believe that the Commission should attempt to impose rules that are industry specific for several reasons. First, we respectfully do not believe that the Commission has been closely considering climate change matters, particularly at the industry level, for as long as many of our members have been considering these issues, including what these matters mean for their competitive landscapes and comparability across their peer groups. We continue to believe that individual companies are best equipped to consider what standards appropriately address the nuances of the climate change factors they face. Second, in our view, some third-party standard providers that promulgate industry standards fail to listen to the very industries for which they have issued standards, and also fail to adequately disclose their methodologies or potential conflicts of interest. This can result in standards that inadequately or inaccurately articulate what climate change factors companies and investors in a particular industry should be focused on. Lastly, we think industry standards can disadvantage certain industries over others, particularly when imposed by an outside standard setter. For example, extractive industries can be viewed as having higher climate change-related impacts and/or risks; however, the industries that are highly dependent on the materials produced by extractive industries, including, but not limited to, the agricultural, manufacturing, construction, retail, technology and transportation industries, are likely to be subject to a complex series of layered climate change-related risks that externally mandated industry-specific standards often fail to take into account.

Instead, we believe that the Commission should adopt a flexible approach that permits (but does not require) each company to use an appropriate and commonly adopted framework that the company believes will best communicate its material climate change-related information. We note that the Commission could use "appropriate and commonly adopted framework" as a term of art, and review frameworks to determine which could create a presumption of compliance with the Commission's requirements. In reviewing frameworks that could be considered "appropriate and commonly adopted frameworks" we would encourage the Commission to consider requiring qualifying frameworks to be (i) established using input from public companies and/or industry organizations in addition to investors and investor-related groups and (ii) created based on a publicly disclosed or described methodology. While we understand that some may think that allowing companies to choose their own appropriate and commonly adopted framework will reduce the comparability of climate change disclosures, in our experience, climate change-related disclosures are rarely, if ever, comparable across all companies due to the number of unique estimates, assumptions and other factors that go into a company's climate change disclosures. However, we believe that if any frameworks are likely to provide comparable disclosures across companies within the same industry, those frameworks created by the applicable industry are among the most likely to create comparability. We also believe that it would be appropriate for the Commission to require companies to very briefly explain why they have chosen a particular framework. We believe that investors would find it useful to have a clearer understanding regarding the processes by which companies choose their reporting framework, and we believe this disclosure would not be overly complex for companies to create.

Climate change goal setting. We also believe that it would be appropriate for the Commission to include in its requirements that, if and only if and to the extent that a company has voluntarily adopted a climate change-related goal and publicly disclosed that goal, the company summarize its high-level plan for achieving that goal and provide annual updates on its progress towards such goal; provided, in each case, that such disclosure is not required to include competitively sensitive information. While we do not believe it would be helpful to investors or practical for companies for the Commission to require companies to establish any particular climate change-related goal, we understand that many companies, including some of our members, are adopting these goals to reflect their specific investors' expectations or their internal desire to align to a particular strategy. Therefore, we think it is appropriate for the Commission to require companies to continue providing their investors with material information regarding their progress towards any goal the company chooses to establish.

"Furnished" rather than "filed" and safe harbor considerations. In all cases, the information provided should be deemed "furnished" and not "filed" and should be further subject to a materiality safe harbor when it has been prepared in good faith. This safe harbor would be in addition to the safe harbors for forward-looking information, which should also apply to any required climate change disclosures, given that all such disclosures are likely to incorporate some level of scenario analysis and/or estimates and assumptions based on future events. These suggestions reflect our experience that ESG disclosures generally, and climate change disclosures specifically, are evolving and will continue to evolve. They also reflect the challenges associated with climate information that may be deemed "filed" at the time of a registered public offering (or contained in management's discussion and analysis), which would, among other things, require comfort letters and subject companies to the associated cost. Furthermore, even if the Commission permits registrants to "furnish" any required climate information, the Commission still should take into account the unique uncertainties and lengthy timelines associated with climate data and scenario-based projections and provide an enhanced materiality safe harbor for this information. We believe this materiality safe harbor should acknowledge that (i) the availability and accuracy of climate change-related data continues to evolve, (ii) companies' efforts to assess the materiality of climate change-related information is likely at least in some respects, and possibly in some material respects, to be inaccurate and/or incomplete when assessed at a future time, and (iii) a presumption of good faith should apply notwithstanding the foregoing.

Timing. With respect to when and where this disclosure is provided, we recommend that the Commission provide companies with the maximum flexibility possible. While we understand that some groups may prefer companies to include such disclosure in their Forms 10-K or proxy statements, we believe this would be nearly impossible given the complexity of the processes involved in creating even high-level climate change disclosure and the fact that the beginning of each company's fiscal year is already very busy preparing current disclosures required under Form 10-K and Schedule 14A. Instead, we recommend that the Commission permit companies to make any required material climate change disclosures in any Regulation FD compliant manner at any time during their fiscal year, using data from the prior fiscal year; provided that the disclosure is produced and disclosed annually and the company discloses in its Form 10-K where and approximately when it will be making its material climate change disclosure that year. In no event should the Commission require companies to create climate change-related disclosures for inclusion in their Forms 10-K or proxy statements for the prior fiscal year and/or using data from the prior fiscal year on the current disclosure timelines. Notwithstanding the foregoing, if the Commission decides to require companies to include their required material climate change disclosures in their SEC filings, we recommend that the Commission take the approach of permitting companies to furnish their disclosures as an exhibit to any Form 8-K or Form 10-Q during the year or in a separate form made specifically for this purpose and filed at any time during the year.

Lastly, we recommend that the Commission provide companies with adequate time to adopt the new requirements, recognizing that larger companies are more likely to have the resources to address the new requirements earlier than smaller organizations. Specifically, we recommend that the Commission give large accelerated filers a full year to implement any new rules and give all other filers at least two years. Practically speaking, this means that if the Commission were to adopt final rules in 2021, large accelerated filers with calendar-year fiscal years would issue climate change disclosure any time in 2023 using 2022 data and other filers with calendar-year fiscal years would issue climate change disclosure any time in 2024 using 2023 data.

V. Conclusion

In an ideal world, since climate change is a global issue, global disclosure standards would exist. However, we think that presents a potentially insurmountable task, and at the present time, we recommend the Commission focus on standards applicable to registrants subject to its rules rather than development of a single set of global standards. As we discussed earlier, climate disclosure standards are still evolving, and subject to significant ongoing change as investor needs, perceived risks, and possible new responses are identified over time. Furthermore, the climate impacts of specific countries and regions vary substantially worldwide, and the policy priorities of governments and regulators similarly diverge in dramatic ways in response to their most important stakeholders' interests. As a result, we believe that establishing global standards, while ideal, would be a difficult task and that the Commission and public companies should not delay their focus on better disclosure in order to achieve a global result. We and our members are focused on the practical and achievable steps that can ultimately result in incremental but meaningful changes.

Finally, we encourage the Commission to consider the broader societal impacts that can result from the creation of a new disclosure regime that is focused solely on climate. EIC's member companies make important contributions to their communities and the broader economy by creating jobs and performing essential services in energy distribution. These are values the Commission should consider when evaluating how any new climate disclosure regime could impact strategic responses to the energy transition. We recognize that climate change represents a global and significant concern, but we also believe that certain social issues, including global poverty alleviation, present challenges that we as a society must continue to find ways to address. As the Commission considers creating disclosure that may incentivize companies in specific ways, we recommend that the Commission consider the complexity of the tradeoffs companies must make in navigating these matters. We know that many of our members are actively considering and addressing a broad array of climate and other ESG issues, and that they will require the flexibility to address them in the manner that allows them to best address the social costs and impacts to the communities they serve. Lastly, we note that while ESG issues may be an important part of the mix of investor information, companies should always be permitted to emphasize the issues that are most influential on their business, results of operations and business risks, and this should remain the aim of any regulation the Commission chooses to adopt.

We thank the Commission for the opportunity to provide our thoughts, and respectfully request that the Commission take our recommendations into account when contemplating climate change disclosures and the potential adoption of regulation. We would be happy to discuss our comments or any other matters that you believe would be helpful. Please contact me at [redacted] or [redacted] if you have questions or wish to discuss our comments.

Sincerely,

Lori E. L. Ziebart
President & CEO
Energy and Infrastructure Council

Appendix A

Investor Responses to the EIC/GPA Midstream ESG Reporting Template

Brookfield Asset Management: "At Brookfield, sound ESG practices are integral to building resilient businesses and creating long-term value for our investors and stakeholders. We aspire to manage our investments with integrity, balancing economic goals with responsible citizenship. We fully support EIC's recent ESG undertakings and the finalized template, as it aligns with our sustainable investing objectives," said Jeff Jorgensen, Managing Director and Portfolio Manager, Brookfield Public Securities Group.

ClearBridge Investments: "At ClearBridge, ESG principles have been part of our investment process since 1987. Today, ESG is fully integrated into our fundamental research across all industry sectors and all investment strategies. The finalized ESG reporting template for EIC companies will greatly improve our ability to internally rate Energy Infrastructure companies on ESG practices, as we do with all investments. We applaud EIC for putting forth a template that offers investors broader and more uniform ESG disclosures. This will contribute to more informed and better investment decisions for our clients," said Terrence Murphy, CEO of ClearBridge Investments.

Cohen & Steers: "As a leader in listed real assets and alternative income solutions committed to investment excellence, we integrate ESG considerations into our investment decisions as we believe companies that incorporate these factors into their strategic plans and operations can enhance long-term shareholder value and mitigate potential risks. Consistent with this objective, we support EIC's initiative to develop a standard ESG reporting template as it promotes transparency of companies' ESG initiatives and metrics to provide consistent and useful information to enable shareholders to make informed investment decisions," said Tyler Rosenlicht, Head of Midstream Energy and MLPs, Cohen & Steers.

Eagle Global: Michael Cerasoli, Co-Head of the Energy Infrastructure Team, Eagle Global said, "We at Eagle Global have long incorporated governance into the risk mitigation component of our investment strategies, and for several years have also emphasized environmental and social factors. We believe these base concepts are the foundation to constructing high quality investment portfolios focused on long-term shareholder returns. We therefore welcome and applaud the EIC's recent ESG initiatives that will provide both us and the general public with better visibility into the critical infrastructure our sector provides."

Goldman Sachs Asset Management: "We were excited to provide input for the standardized ESG reporting template and applaud the EIC for coordinating this effort. It's a critical first step towards increasing transparency for investors and setting long-term ESG priorities, the latter of which we believe is particularly important as companies focus on reducing their carbon footprint and investors mandate improved corporate governance in the form of management alignment with shareholders and more sustainable operating models. We strongly encourage all midstream companies to adopt this template and believe it should continue to evolve with stakeholder objectives," said Kyri Loupis, Head of Energy Infrastructure & Renewables, Goldman Sachs Asset Management.

Kayne Anderson Capital Advisors: "At Kayne Anderson, ESG factors are an important component in our investment decision-making process. We encourage companies to adopt the EIC's Reporting Template as it promotes transparency and helps standardize reporting of ESG metrics for energy infrastructure companies," said Jim Baker, Managing Partner, Kayne Anderson Capital Advisors.

TortoiseEcofin: Matt Sallee, President, Tortoise, said, "TortoiseEcofin has a long-standing commitment to corporate responsibility. As part of our mission to make an impact through essential asset investing, each of the firm's business lines integrates the United Nations-supported Principles for Responsible

Investment ("PRI"), the United Nations Sustainable Development Goals ("SDGs") and other environmental, social, and governance ("ESG") factors throughout the security selection and post investment monitoring processes. We fully support the EIC's work creating a template that assists member entities in organizing and standardizing ESG disclosures. This initiative aligns with our active engagement approach with management teams through discussions and our published *Essential Playbook for Midstream Management*. We encourage all midstream companies to adopt the EIC reporting template."

We provide these statements of support as indications of investors' general support of our members' ESG efforts, and not as indications of the degree to which any specific ESG disclosures may or may not be material to the investment or voting decisions of any particular investor. In practice, it is the experience of many of our members that their ESG disclosures include matters that are unlikely to be considered material by all their investors for the purposes of investment or voting decisions.