



Edison Electric
INSTITUTE



April 28, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File Number S7-01-20
**Proposed Rule: Management's Discussion and Analysis,
Selected Financial Data, and Supplementary Financial Information**

Dear Ms. Countryman:

The Edison Electric Institute (EEI) and the American Gas Association (AGA) appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) request for comment on File Number S7-01-20, Proposed Rule: *Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information* ("Proposed Rule").

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies as International Members, and hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

AGA, founded in 1918, represents 202 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which almost 93 percent – more than 65 million customers – receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States' energy needs.

EEl and AGA regularly work together on projects of mutual interest and impact to the energy utility sector broadly. The comments expressed herein respond only to certain questions that are most relevant to our members.

Item 301 – Selected Financial Data and Item 302(a) – Selected Quarterly Financial Data

We support the proposal to eliminate Items 301 and 302(a). We understand these disclosure requirements were intended to provide financial statement users key summary annual and quarterly data and highlight significant financial trends for the registrant and agree they are largely duplicative of information readily available elsewhere.

Three and two-year comparative annual data for the income statement and balance sheet, respectively, is contained elsewhere in the Form 10-K, and quarterly data is contained in previously filed Forms 10-Q, which are readily available to financial statement users. MD&A requires disclosure of a registrant's financial performance, which generally includes a discussion of any significant financial trends, and the selected financial data does not add significant incremental value beyond that already typically included in Management's Discussion & Analysis (MD&A).

Additional financial statement periods are also available online, either on company or SEC websites, which allows financial statement users to access prior information if needed. Prior period financial information was not as readily available when this requirement was initially enacted. In addition, use of XBRL allows financial statement users to extract specific financial data for various periods that are of greatest interest to them. Company websites have also developed over recent years to include various financial and non-financial data that can be useful to investors.

Finally, the selected financial data creates additional complexity under current disclosure requirements when evaluating whether a registrant is required to recast prior period financial statements as a result of adopting new accounting standards or a change in the business, such as a discontinued operation. In cases where a registrant is required to recast prior periods, the financial statements are recast for all periods presented (three years for income statement and two years for balance sheet). Recasting the fourth and fifth years included in the selected financial data adds incremental cost with limited benefit. We believe the recast financial statements provided under relevant accounting requirements are sufficient to evaluate the impact of accounting changes on results of operations and financial condition.

Item 303(a)(2) – Capital Resources

Item 303(a)(4) – Off-Balance Sheet Arrangements

Item 303(a)(5) – Contractual Obligations

We support the Commission’s proposal to amend current Item 303(a)(2) to specify, consistent with the Commission’s 2003 MD&A Interpretive Release, that a registrant should broadly disclose material cash commitments, including but not limited to capital expenditures, anticipated sources of funds needed to satisfy such cash requirements, and the general purpose of the requirements. We also concur with the proposal to modernize Item 303(a)(2) by specifically requiring disclosure of material cash requirements (including, but not limited to, capital expenditures) to encompass all material cash commitments.

We agree with the proposal to consolidate off-balance sheet arrangements and contractual obligations into capital resources under more principles-based instructions. To that end, we recommend registrants be allowed discretion as to whether to make this disclosure under a separate caption within the capital resources section.

While acknowledging that integration of the contractual obligations information with capital resources is consistent with the overall objective of the Commission, we believe a remaining important issue to address is the inconsistent interpretation and treatment of contractual obligations, including purchase obligations and construction contracts, in the footnotes and MD&A. For example, when a registrant evaluates a pool of contracts for the Commitments footnote required by ASC 440-10-50, *Commitments*, the registrant discloses legal obligations therein, whereas the registrant discloses cash commitments in MD&A for the same pool of contracts. We urge the Commission to align the GAAP and MD&A requirements to provide a clear and consistent definition for contractual obligations that will eliminate duplicative and inconsistent disclosures.

Item 303(a)(3)(ii) – Results of Operations – Known Trends or Uncertainties

We support the Commission’s proposed amendment to Item 303(a)(3)(ii), which better reflects the Commission’s intent and subsequent guidance and is consistent with current practice.

Item 303(a)(3)(iv) – Results of Operations – Inflation and Price Increases

We support the Commission’s proposal to eliminate Item 303(a)(3)(iv) and current Instruction 8 and Instruction 9 to Item 303(a) and agree that registrants should focus their MD&A on registrant-specific material information.

Critical Accounting Estimates

In our comments submitted July 21, 2016 in response to the Request for Comment contained in the *Business and Financial Disclosure Required by Regulation S-K Concept Release*, we recommended the Commission work with the FASB to find ways to reduce redundancy between Regulation S-K and the requirements for accounting policies disclosure contained in ASC 235-10-50 *Notes to Financial Statements*, while maintaining the objective of providing an analysis of the uncertainties of applying the specific principles in the registrant's MD&A. We appreciate your consideration of our recommendation and we support amending Item 303 to emphasize that it is intended to "eliminate disclosure that duplicates the financial statement discussion of significant accounting policies."

We agree with the principle underlying the proposed definition of critical accounting estimates. This principle is articulated most clearly in the last paragraph of the proposal prior to the Request for Comment (emphasis added): "Critical accounting estimates disclosure should provide management's insights into **estimation uncertainties** that **have had or are reasonably likely to have a material impact** on reported financial statements." As stated later in that paragraph, it is clear that the focus is on "**estimation uncertainty** that can materially affect reported amounts. (emphasis added)."

We provide below two examples of accounting estimates common in our industry that illustrate the application of this principle, as well as our subsequent recommendation to further clarify the definition in the final rule.

- **Unbilled accounts receivable – material accounting estimate with low estimation uncertainty:**

Energy companies generally bill their customers monthly on a 30-day cycle, dividing billings between each workday of the month. This levelizes cash flows and processing costs. Revenues for sales occurring between the billing date and the last day of a reporting period are "unbilled" receivables that are estimated during the preparation of financial statements. Unbilled receivables are often material to the balance sheet.

These unbilled receivable amounts are generally derived from management's estimate of unbilled volumes delivered to customers multiplied by tariff rates that have been approved by a regulator. Companies are able to estimate unbilled volumes with a high level of precision using well-established methodologies that are largely mechanical calculations. Automated metering gives some companies

the ability to calculate unbilled volumes with near certainty. Because of the low level of estimation uncertainty, such estimates rarely are included in the disclosures of critical accounting estimates.

This example illustrates the importance of clarity that the definition of critical accounting estimates does not apply to financial statement amounts simply because they are material balances based on estimates, but rather is focused on whether the computation of those amounts includes significant estimation uncertainties that have had, or are reasonably likely to have, a material impact on the reported amount if different estimation assumptions were used.

- **Carrying Value of Long-Lived Assets (including goodwill and intangibles) – accounting estimate reasonably likely to have a material impact with a significant level of estimation uncertainty:**

A company is required to evaluate long-lived assets for impairment when events or changes in circumstances indicate that the carrying amount may not be recoverable. Performing an impairment evaluation involves a significant degree of estimation and judgment. Three examples of management assumptions made in evaluating long-lived assets for impairment that involve a significant level of estimation uncertainty are: 1) identifying circumstances that indicate an impairment may exist, 2) the amount and timing of future cash flows, and 3) the appropriate interest rate if discounting is required.

Management uses the best information available at the time it makes these estimates. Because of the uncertain nature of future events, it is reasonably likely that such uncertainty could impact these estimates and have a material impact on reported financial statements. The current COVID-19 global pandemic is an example of an unforeseen event that will have wide-ranging economic impacts, many of which are still uncertain. Whether the pandemic is deemed a triggering event requiring an interim impairment evaluation will depend on a number of company-specific facts and circumstances.

This example illustrates the importance of clarity that the definition of critical accounting estimates applies to *estimation uncertainties* that have resulted, or are at least reasonably likely to result, in a material impact on the financial statements and not on the materiality of the initial or subsequent measurements of the estimate itself. The carrying value of long-lived assets is commonly included in disclosures of critical accounting estimates even if there are no impairments.

These examples illustrate the principle underlying the proposed rule that the disclosure of critical accounting estimates should provide management's insights into *estimation uncertainties that have had or are reasonably likely to have a material impact*. However, we believe the proposed formal definition of critical accounting estimates is not sufficiently clear in this respect.

The proposed definition states that a critical accounting estimate is "an estimate...that involves a significant level of estimation uncertainty **and** has had or is reasonably likely to have a material impact..." (emphasis added) Written this way, the proposed definition could be interpreted to mean that the rule applies if the estimate itself is material, regardless of the potential materiality of the estimation uncertainty. Consequently, it could lead to confusion or misapplication, either by unnecessary application to material financial statement estimates that are not subject to significant estimation uncertainty or failure to include immaterial financial statement amounts that are subject to significant potential estimation uncertainty.

Therefore, we believe the formal definition of critical accounting estimates needs to be clarified in the final rule so as to be in alignment with the Commission's intent. One potential clarification would be to amend the definition to include the highlighted words below:

Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty, and **that estimation uncertainty** has had, or is reasonably likely to have, a material impact on financial condition or results of operations.

Additionally, we recommend that the Instructions to paragraph 303(b)(4) in the final rule be amended to incorporate the following language from the discussion of the proposed rule in order to clarify the intent of the definition:

Critical accounting estimates disclosure should provide management's insights into estimation uncertainties that have had, or are reasonably likely to have, a material impact on reported financial statements. Critical accounting estimates involve estimation uncertainty that can materially affect reported amounts.

Disclosure of Information Relating to Public Policy and Sustainability Matters

In its Request for Comment on the Concept Release, *Business and Financial Disclosure Requirements in Regulation S-K*, the Commission sought public input on sustainability and public policy disclosures. In our responsive comments dated July 21, 2016, we urged the Commission not to depart from the disclosure principles in Regulation S-K by including topic-specific sustainability, corporate governance, or similar categories for specific disclosure. We argued, for a variety of reasons, that doing so would reduce the effectiveness of the existing reporting regime and would be sub-optimal for those seeking broad-based reporting on matters outside the scope of SEC filings. Instead, we supported the existing, time-tested approach in Regulation S-K that focuses on the needs of users of financial information and is based on principles designed to elicit disclosure of all material items, regardless of topic.

We have reviewed the comments we offered in our previous letter and believe they remain applicable. We note that the Proposed Rule is consistent with our prior recommendations in that it does not include new disclosure requirements relating to public policy and sustainability matters. We are gratified that the Commission has crafted a proposal consistent with our recommendations.

Events since the filing of our prior comments reinforce the approach the Commission has taken in retaining the historic principles of Regulation S-K and affording registrants the flexibility to provide stakeholders information on these topics by other means. We worked collaboratively with our members and investors and consulted with a broad variety of other stakeholders to develop a voluntary, industry-specific Environmental, Social, and Governance (ESG) report tailored to investors' expressed needs. Further, we note that others have recognized that ESG metrics do not meet the definition of materiality as a topic but only in relationship to a specific registrant's operations and finances, as we had argued previously.

Therefore, we are pleased to support the fact that the Proposed Rule does not revise Regulation S-K to add disclosures based upon topics such as sustainability or corporate governance. We continue to believe that the substantive differences between the purpose, content and objectives of SEC filings compared to reports on sustainability and public policy matters demonstrate that users of each type of data would be best served through reports targeted to the specific objectives of such reporting. We have found that ESG topics can be addressed best in separate reports focused on those matters with a context, scope, and format that is not restricted by, or commingled with, specific rules related to financial disclosures.

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EI and AGA appreciate the opportunity to provide our input on this Proposed Rule. We would be pleased to discuss our comments and to provide any additional information that you may find helpful.

Very truly yours,

/s/ Richard F. McMahon, Jr.

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Vice President, Edison Electric Institute

/s/ Brody Wilson

Brody Wilson
Chair, American Gas Association Accounting Advisory Council
Vice President, Treasurer & Chief Accounting Officer, NW Natural