MEMORANDUM

To: Comment File (S7-10-22) – The Enhancement and Standardization of Climate-Related Disclosures for Investors

From: The Office of the Chair, U.S. Securities and Exchange Commission

Date: May 9, 2023

Re: Meeting with the American Exploration & Production Council

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On May 9, staff from the Office of the Chair met with members of the American Exploration & Production Council (AXPC) about the SEC's proposal for the enhancement and standardization of climate-related disclosures for investors. During the meeting, the participants discussed their comment letter, including their recommendations related to furnishing information (as opposed to filing), safe harbors for certain disclosures, GHG emissions reporting, the proposed financial statement metrics, and timelines for implementation.

Attendees:

- Mika Morse, Chair's Office
- Maggi Young, Chesapeake Energy
- Andrew Wurdack, Ovintiv
- Barry Schachter, Hess
- Gina Felton, ConocoPhillips
- Clay Selby, ConocoPhillips
- Wendy Kirchoff, AXPC
- Matt Kellogg, Rich Feuer Anderson
- Ben Harney, Rich Feuer Anderson

AMERICAN EXPLORATION & PRODUCTION COUNCIL

Discussion with SEC on Climate Disclosure Rule

May 9, 2023

AGENDA

- Introductions
- General Views on Rule
- Allowing Firms to Furnish Proposed Climate Disclosure Information
- Unworkability of Proposed Reg S-X Changes
- Need for Expanded Safe Harbor
- Implementation Timeline
- Scope 3

WHO IS AXPC?

Leading Independent Upstream Oil and Gas Producers in U.S.

- Antero Resources
- Apache – Exploring What's Possible
- Ascent Resources
- Callon Petroleum
- Chesapeake Energy
- Chord Energy
- Civitas
- ConocoPhillips
- Coterra
- Crescent Point Energy Corp
- devon
- Diamondback Energy
- Diversified energy
- Encino Acquisition Partners
- enerPLUS
- eog resources
- EQT
- Gulfport Energy
- HESS
- Hilcorp
- Jonah Energy LLC
- Marathon Oil Corporation
- Mewbourne Oil Company
- Ovintiv
- Permian Resources
- PDC Energy
- Pioneer Natural Resources
- PureWest – Essential Energy. Responsibly Produced.
- Seneca Resources
- SM Energy
- swn Southwestern Energy
- Vital Energy
- XTO Energy

AXPC

Allowing Firms to Furnish Information

AXPC Ask: Allow companies to furnish, rather than file, proposed climate-related disclosures under the Securities Exchange Act of 1934

- Companies already file any material disclosures, including climate-related disclosures in their 10-K and 10-Q. Allowing issuers to furnish, rather than file, additional proposed climate-related information would allow for quantitative and qualitative discussion of relevant metrics without creating these new liability concerns. Furnishing disclosure would encourage broader disclosure.
  - If proposed climate-related disclosures are required to be filed, companies would be subject to section 18 liability and incorporated by reference into a filing under the Securities Act of 1933 (the “Securities Act”) and potentially subject the issuer to strict liability under section 11 of the Securities Act. Under that scenario, some issuers would be incentivized to disclose in the manner most limited to meet the specific requirement and avoid more robust explanation
- Unlike the precision of financial information, all climate and emissions-related information is based on estimates, methodologies and internal modeling. Climate and emission-related information is captured outside the established financial reporting process due to how the information is accessed or developed within companies. Much of the assessment of potential climate and emission information is qualitative in nature, and specific GHG emission information is calculated based upon models and accepted technical factors related to GHG emissions sources.
- It is problematic to quantify and bifurcate the discrete impacts of climate-related events and trends. For example, filing GHG emission data with a company's 10-K, as proposed, does not align with the EPA GHG reporting deadlines, and EPA amendment process.
- To disclose on a net equity basis, consistent with our financial filings, would require initiating renegotiations of company joint operating agreements, as these do not customarily require the sharing of climate related data. As with any renegotiation, this could lead to partners wanting to renegotiate other aspects of these operating agreements leaving companies competitively disadvantaged.
- If the SEC should require climate related disclosures to be provided through a specialized, separately furnished climate disclosure report (e.g., Form SD), the enhanced safe harbor should be applicable to the entirety of said report.

Changes to Regulation S-X Proposals

AXPC Ask: The Commission should remove any new Regulation S-X requirements. The requirements are impractical and generally unworkable as proposed.

- Climate-related risks are very difficult to align numerically to financial impacts and report on a line-item basis.
- Any changes to financial metrics should be on a prospective basis from the point of implementation. Any reporting periods prior to the effective date should not be required to be presented in the initial SEC filings reflecting the new disclosures established in a Final Rule.
- Proposed climate-related disclosures do not align to industry practices. For example, companies may modify design plans of a facility following a physical assessment for severe weather events and other natural conditions (e.g., flooding, high winds, fire, etc.) to address such events based on the probability of occurrence. Under the Proposed Rule, it appears the SEC expects a registrant to parse out discrete aspects of a design planned to manage specific climate-related risks, such as increased rainfall.
- Companies do not currently track the information in the proposed rule in separate line items for such expenses, nor does there exist a standard or acceptable definitions for how to parse out the climate change components versus those components that are natural weather patterns for areas and ecosystems.
    - The Proposed Rule does not prescribe which natural conditions and severe weather events should be included in the disclosure of financial impacts.
- There is no way to identify commodity price impacts associated with the climate-related disclosures required under the proposed rule, including for severe weather events.
- Instead of moving forward with the Reg S-X changes as proposed, SEC should proceed through the established FASB process.

Expanded Safe Harbor

<u>AXPC Ask</u>: Enact a meaningful safe harbor that covers the entire final rule consistent with existing liability protections and safe harbors found in current reporting regulations to climate related information.

- The proposed Climate Disclosure rule creates new and novel requirements for publicly traded firms. Even seeking to collect and estimate emissions data is challenging for the largest and most sophisticated companies — let alone the thousands of smaller public companies that have <u>never</u> collected emissions data before.
- The SEC should enhance the safe harbor to recognize the evolving nature of reporting concepts, measurement tools, methodologies and techniques as well as inherent uncertainties of assessing climate risks to the level of granularity (e.g., risks to specific locations and assets) required in the Proposed Rule.
- Registrants should be shielded from liability for forward-looking statements, other disclosures based on estimates, third-party data, developing methodologies and any inaccuracy in the reporting of the many metrics that necessarily involve uncertainty and subjective or speculative judgment calls.
- Provide a safe harbor provision for Scope 1 and 2 GHG emission data due to the evolving nature of reporting methodologies . Also provide companies the ability to make amendments and/or updates to previously disclosed greenhouse gas ("GHG") emissions data and other qualitative climate-related disclosures considering the complexity of gathering, processing and verifying such information and the evolving technical landscape for measuring emissions.
- Provide a safe harbor for company directors that are deemed "climate experts."

Final Rule Implementation Timeline

AXPC Ask: The Commission should ensure that any final rule's requirements apply prospectively and allow a reasonable implementation period depending the gravity of changes from current law in the Final Rule. Annual reporting timelines must allow companies sufficient time to build reporting capacity and gather and verify disclosable data.

- Minimally, companies will need at least two (2) years from the date the Final Rule becomes effective to build appropriate processes and systems to meet SEC requirements.
- Some changes, such as Scope 1 and 2 emission disclosure requirements and assurance, as well as Reg S-X propose amendments could take at least five (5) years following adoption of the Final Rule.
- Scope 3 requirements will require an even longer period to comply.
- To accommodate special challenges posed in mergers and acquisitions, we recommend that the SEC, on an ongoing basis, permit companies to delay reporting on acquired businesses for an additional year from the date of acquisition
- As the Final Rule becomes effective, SEC should align annual reporting timelines to EPA GHG reporting timelines.

Scope Three Emissions

<u>AXPC Ask</u>: The SEC should forego any required Scope 3 reporting.

- There are inherent difficulties and inconsistencies with comparably reporting Scope 1, Scope 2 and Scope 3 emissions. However, Scope 3 is entirely novel.
- Not all Scope 3 reporting is equal or comparable and although various methodologies and categories for Scope 3 reporting exist, the lack of uniformity and amorphous nature of current guidelines often makes disclosures between companies noncomparable.
- Due to data gaps, boundary definitions, and ambiguous categories, Scope 3 emissions disclosures lack consistency and utility.
- This data needs to be treated with caution regarding the reliability of such disclosed estimates.