



June 6, 2022

Chairman Gary Gensler and Commissioners M. Hester Pierce,
Allison Herren Lee, and Caroline A. Crenshaw
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-10-22, The Enhancement and
Standardization of Climate-Related Disclosures for
Investors, Proposed Rule

Dear Chair Gensler and Commissioners Pierce, Lee, and Crenshaw:

The Center for Biological Diversity (Center) applauds the Securities and Exchange Commission's (Commission) important Notice of Proposed Rulemaking (NOPR) to require registrants to disclose their climate risks, including their greenhouse gas emissions.¹ The NOPR is a vital step toward meaningful disclosure of climate risks, and, with certain improvements discussed below, has the potential to fulfill the Commission's mandate to require that companies disclose all material climate-related risks to investors.

The Center is a national non-profit advocacy organization with more than 1.7 million members and online activists around the country. The organization's Energy Justice program focuses on the urgent need to expedite the just and renewable energy transition to protect human health, the natural environment, and species from the ravages of climate change. One critical obstacle in this vital transition is our nation's private utility companies, who are engaged in a multi-faceted and often coordinated campaign to preserve and even expand their immense and dangerous fossil fuel portfolios as part of their business model. As discussed below, if done properly, the SEC's climate change disclosures can provide utility shareholders with information that will be highly material to their investment decisions, including the massive risks these companies pose in light of both their fossil fuel investments and their many activities seeking to thwart the vital clean energy transition needed to beat the climate emergency.

¹ 87 Fed. Reg. 21,223 (Apr. 11, 2022).

While we largely support the NOPR, as discussed below we urge the Commission to make several concrete improvements to strengthen the climate change disclosure requirements. These include: (1) eliminating exemptions for Scope 3 emissions disclosures; (2) improving the scope and accountability of the disclosures addressed in the NOPR; and (3) moving up the timeline for these requirements to begin.

Discussion

A. Because Climate Change Disclosures Are Material To Investors, They Are Well Within The Scope of The Commission’s Authority And Mandate.

Although the NOPR proceeds on the premise that climate change disclosures are material, and within the Commission’s authority, critics continue to argue that there is no basis for the agency to require these disclosures.² Accordingly, we begin by reiterating the sound bases for the Commission’s proceeding with these vital disclosures.

First, as a threshold matter, an overwhelming international scientific consensus has established that human-caused climate change is already causing severe and widespread harms, and that climate change threats are becoming increasingly dangerous. The climate emergency, caused primarily by fossil fuels, poses an existential threat to every aspect of society. Fossil fuel-driven climate change has already led to more frequent and intense heat waves, floods, and droughts; more destructive hurricanes and wildfires; rising seas and coastal erosion; increased spread of disease; food and water insecurity; acidifying oceans; and increasing species extinction risk and the collapse of ecosystems. The climate emergency is killing people across the nation and around the world, and costing the U.S. economy billions in damages every year. The vast scientific literature documenting these findings has been set forth in a series of authoritative reports from the Intergovernmental Panel on Climate Change (IPCC), U.S. Global Change Research Program, and other institutions,³ which make clear that fossil-fuel driven climate change is a “code red for

² See, e.g., *We are Not the Securities and Environment Commission - At Least Not Yet*, Statement of Commissioner Hester M. Pierce, Mar. 21, 2022, <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321> (arguing these disclosures are not warranted); see also CO₂ Coal., *CO₂ Coalition Statement Regarding SEC Regulation of Climate Change Disclosures*, CO₂ Coal. (June 9, 2021), <https://co2coalition.org/2021/06/09/%EF%BB%BFco2-coalition-statement-regarding-sec-regulation-of-climate-change-disclosures> (arguing that climate change is not real and that requiring companies to address climate risks is akin to disclosures regarding how they would “address an asteroid strike”); May 4, 2022 Letter from Republican Congressmembers, <https://republicans-oversight.house.gov/release/oversight-republicans-slam-the-biden-administrations-sec-rule-to-expand-climate-agenda/>.

³ U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment*, Vol. I (2017), <https://science2017.globalchange.gov/>; U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States*, Fourth National Climate Assessment, Vol. II (2018), <https://nca2018.globalchange.gov/>; Intergovernmental Panel on Climate Change, *Summary for Policymakers*. In: *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i>.

humanity.”⁴ Without limits on fossil fuel production and deep and rapid emissions reductions, global temperature rise will exceed 1.5°C and will result in catastrophic damage in the U.S. and around the world.⁵

The harms from the climate emergency and fossil fuel pollution are not felt equally, but instead fall first and worst on Black, Brown, Indigenous, and other communities of color, as well as low-wealth and other frontline communities, worsening the crisis for environmental justice communities.⁶ The climate emergency also poses additional risks to other vulnerable communities, including children, older adults, immigrant groups, and persons with disabilities and pre-existing medical conditions.⁷

The electricity sector is a leading source of U.S. greenhouse gas (GHG) emissions, making up 25% of total GHG emissions in 2019.⁸ Utilities therefore have a unique responsibility to decarbonize their operations and shift away from the fossil fuel energy harming marginalized and vulnerable

⁴ United Nations Secretary-General, *Secretary-General’s statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment*, Aug. 9, 2021, <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

⁵ Intergovernmental Panel on Climate Change, 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* (2018) [Masson-Delmotte, V. et al. (eds.)], <https://www.ipcc.ch/sr15/>

⁶ Donaghy, Tim & Charlie Jiang for Greenpeace, Gulf Coast Center for Law & Policy, Red, Black & Green Movement, and Movement for Black Lives, *Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal Can Protect Communities* (2021), <https://www.greenpeace.org/usa/wp-content/uploads/2021/04/Fossil-Fuel-Racism.pdf>; U.S. Environmental Protection Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA 430-R-21-003 (2021), www.epa.gov/cira/social-vulnerability-report. 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 color/ind 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 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>.

⁷ 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.

⁸ U.S. Env’t Prot. Agency, *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (2021).

communities, as well as species. To that end, President Biden has issued an Executive Order to transform the entire U.S. electricity sector to be carbon-free by 2035.⁹

We provide further details and discussion concerning the Climate Emergency in the Addendum at the end of this comment letter.

Second, given this stark reality, it is no surprise that investors have increasingly demanded that companies disclose their climate risks and related information, which satisfies the Commission’s materiality requirement.¹⁰ In the 2010 Climate Disclosure Guidance, the Commission 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.¹¹ Given this standard, and investor demand for this information, the Commission is well within its broad discretion in issuing these disclosure requirements.¹²

Third, it is also indisputable that, in response to this demand and other pressures, companies across sectors have been engaged in widespread and largely *ad-hoc* disclosures intended to both reassure investors and convince customers that they are taking appropriate steps to address and mitigate climate change impacts.¹³ This includes utility companies, who regularly make public statements concerning their commitment to a rapid transition to clean energy that are entirely inconsistent with their existing and planned investments in fossil fuel infrastructure.¹⁴

⁹ 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/>.

¹⁰ See, e.g., Public Citizen, *Survey Reveals Retail Investors Want SEC to Require Climate Disclosure*, Apr. 29, 2022, <https://www.citizen.org/news/survey-reveals-retail-investors-want-sec-to-require-climate-disclosure/>.

¹¹ Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6,290, 6,193 (Feb. 8, 2010).

¹² See also, e.g., 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) (explaining that disclosures like those related to climate change have become highly material to investors, who are increasingly concerned about these matters in making investment decisions, noting 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, and emphasizing 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.”), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf>.

¹³ See, e.g., Dan Gearino, *Utilities Are Promising Net Zero Carbon Emissions, But Don’t Expect Big Changes Soon*, Inside Climate News, Oct. 15, 2019, <https://insideclimatenews.org/news/15102019/utilities-zero-emissions-plans-urgency-coal-gas-duke-dte-xcel/>; NOPR at 21,429 (citing sources concerning greenwashing).

¹⁴ See, e.g., Sierra Club, *The Dirty Truth About Utility Climate Pledges*, Jan. 2021, <https://tinyurl.com/bdfrr829>; Center for Biological Diversity, *Utility Greenwashing in Websites and Investor Reports*, 2019, <https://tinyurl.com/yc3cufja>; NOPR at 21,342 n.85 (noting that only 40% of the energy sector is making voluntary disclosure).

Indeed, in dissenting from the NOPR even Commissioner Pierce recognized that there is a “lot of confusion and greenwashing” in existing corporate statements on climate change disclosures.¹⁵ Accordingly, by standardizing and mandating consistent disclosures, the Commission will be meeting a growing market demand for information by insuring timely and consistent climate change disclosures.

The recent report by the Department of Treasury’s Financial Stability Oversight Council (FSOC) reinforces this conclusion.¹⁶ The Report was issued in response to President Biden’s 2021 Climate-Related Financial Risk Executive Order, which directed the agency to address, *e.g.*, “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.”¹⁷ As the FSOC concluded:

Currently, neither existing regulatory requirements nor voluntary frameworks have led to comparable, consistent, and decision-useful climate-related disclosures across U.S. companies and financial institutions. Enhanced climate-related disclosures can help fill this gap and can better inform investors and market participants about climate-related risks to firms. These disclosures can help mitigate climate-related risks by bringing transparency to climate-related risks that may otherwise not be well understood by investors or adequately priced into markets.¹⁸

Accordingly, as Treasury Secretary Janet Yellin recently noted, “[m]arket participants will be better positioned to understand and manage climate-related financial risks if consistent, comparable, and decision-useful information on those risks is available” through the SEC’s climate change disclosure framework.¹⁹

Finally, given that the NOPR closely hews to the existing framework of the Task Force for Climate-Related Financial Disclosures (TCFD), complaints that these disclosures will not provide uniform and useful information for investors, or will be prohibitively expensive, are also hyperbole that should not distract the Commission from moving forward.²⁰ As noted in the NOPR, other

¹⁵ See *supra* n.2.

¹⁶ See Financial Stability Oversight Council (“FSOC”), Report on Climate-Related Financial Risk 2021 (Oct. 2021) (“2021 FSOC Report”), <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

¹⁷ 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/>.

¹⁸ *Id.* at 88.

¹⁹ Mar. 21, 2022 Statement by Janet Yellin, <https://home.treasury.gov/news/press-releases/jy0672>.

²⁰ *Id.*

countries including New Zealand²¹ and the United Kingdom²² are similarly following the TCFD approach, and the European Union (EU) is also moving in this direction.²³ The NOPR also notes that the TCFD Framework “has been widely accepted by issuers, investors, and other market participants.”²⁴

In short, given the deliberate and well-accepted approach the Commission has taken to these disclosures, there is no basis to arguments that the Commission somehow lacks the authority to impose the rules set forth in the NOPR. To the contrary, given the materiality of this information, failing to move forward – and strengthen the NOPR as discussed below – would itself be an abdication of the agency’s statutory obligations.

B. The NOPR Should Be Strengthened To Better Ensure That Companies Provide Investors With All The Material Information Relevant To Their Decision-Making

While the Center supports many of the elements of the NOPR, there are several important areas where the Commission should strengthen these disclosures to insure that investors and the public obtain timely, actionable information regarding company’s climate risk governance, management, risks, strategies, and targets.

1. The Final Rule Must Eliminate Exemptions For Scope 3 Emissions

While the NOPR proposes to require companies to report, and eventually attest to the accuracy of, Scope 1 and 2 emissions, the Commission is considering codifying several gaping loopholes for Scope 3 emissions. For the reasons discussed below, it is vital that in the Final Rule the Commission eliminate these loopholes and require mandatory and accountable disclosure of Scope 3 emissions.

As the NOPR explains, appropriate data about a registrant’s GHG emissions allows investors to evaluate both the company’s climate risk exposures, as well as the accuracy of its commitments to reduce those emissions.²⁵ Three categories of GHG emissions are relevant: emissions from sources

²¹ 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/>.

²² 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.

²³ 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.

²⁴ 87 Fed. Reg. at 21,343.

²⁵ NOPR at 21,344; 373.

the company itself owns or controls (Scope 1); emissions from the energy the company directly uses (Scope 2); and all the other emissions indirectly attributable to the company (Scope 3).

As detailed in the Greenhouse Gas Protocol (GHG Protocol), Scope 3 emissions include fifteen separate emissions sources, both upstream and downstream.²⁶ Upstream activities include:

- A registrant’s purchased goods and services;
- A registrant’s capital goods;
- A registrant’s fuel and energy related activities not included in Scope 1 or Scope 2;
- Transportation and distribution of purchased goods, raw materials, and other inputs;
- Waste generated in a registrant’s operations;
- Business travel by a registrant’s employees;
- Employee commuting by a registrant’s employees; and
- A registrant’s leased assets related principally to purchased or acquired goods or services.

Downstream activities, on the other hand, include:

- Transportation and distribution of a registrant’s sold products, goods or other outputs;
- Processing by a third party of a registrant’s sold products;
- Use by a third party of a registrant’s sold products;
- End-of-life treatment by a third party of a registrant’s sold products;
- A registrant’s leased assets related principally to the sale or disposition of goods or services;
- A registrant’s franchises; and
- Investments by a registrant.²⁷

Understanding the extent of a registrant’s Scope 3 emission is vital for multiple reasons.²⁸ As the U.S. Environmental Protection Agency has explained, Scope 3 emissions often represent *the majority of a company’s total GHG emissions*.²⁹ Moreover, as the GHG Protocol explains, given their size Scope 3 emissions may also “present *the most significant opportunities* to influence GHG reductions and achieve a variety of GHG-related business objectives.”³⁰

²⁶ Corporate Value Chain (Scope 3) Accounting and Reporting Standard, WRI, at 5, https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard-EReader_041613_0.pdf

²⁷ *Id.*

²⁸ See, e.g., Center for American Progress, Why Companies Should be Required To Disclose Their Scope 3 Emissions, Dec. 13, 2021, <https://tinyurl.com/mrnkwxvz>.

²⁹ See U.S. EPA, Scope 3 Inventory Guidance, <https://tinyurl.com/y4s9r9d5>.

³⁰ GHG Protocol at 6 (emphasis added).

Accordingly, as some commentators have explained, “[a]dding Scope 3 to mandatory reporting as for Scope 1 and 2 emissions or introducing a uniform materiality threshold *would provide a far more comprehensive picture of a company’s total emissions exposure.*”³¹

Nonetheless, despite the critical importance of Scope 3 emissions, the NOPR includes several gaping holes in the Scope 3 reporting requirement, including allowing companies to ignore Scope 3 emissions if they do not deem them material, and removing all accountability for this reporting. These and other loopholes must be closed in the Final Rule.

a. Companies Must Be Held Accountable For Scope 3 Emissions Disclosures [NOPR questions 135-143³²]

As the NOPR explains, there are myriad reasons why it is essential that reporting companies include an attestation regarding their climate change disclosures.³³ These include assurances regarding the accuracy of these disclosures, because the attestation exposes the company to legal accountability for omissions.³⁴ Accordingly, the NOPR proposes to require companies to include an attestation regarding the accuracy of both Scope 1 and 2 emissions.³⁵

However, in a gaping loophole, the NOPR proposes to *completely exempt all Scope 3 emissions from the same accountability requirements.* This would unnecessarily undermine the disclosure regime for several reasons.

First and foremost, as noted, Scope 3 emissions represent both the majority of many companies’ emissions, and the place where they might most effectively obtain emission reductions. Allowing companies free rein to misreport or completely disregard those emissions thus misses a substantial opportunity for shareholders to fully comprehend a registrant’s relevant climate risks and actions – as well as, incidentally, to drive emission reductions. Moreover, the size of Scope 3 emissions itself highlights that they are material to investors, and thus that accurately reporting them is vital.

Second, allowing companies to hide Scope 3 emissions inappropriately externalizes climate and environmental impacts that shareholders have a right to know when making investments. These climate impacts may never be accounted for in any other context. Because these climate emissions would not be emitted *but for* the activities of the registrant and that they are unlikely to be reported elsewhere, it is logical that such emissions be accounted for by the registrant and disclosed to

³¹ Kenji Watanabe & Umar Ashfaq, *Which Scope 3 Emissions Will the SEC Deem ‘Material’?*, MCSI, Apr. 28, 2022, <https://www.msci.com/www/blog-posts/which-scope-3-emissions-will/03153333292>. (emphasis added).

³² In each section we indicate which NOPR questions the section responds to after the heading.

³³ NOPR at 21,393-96.

³⁴ *Id.*

³⁵ NOPR at 21,346.

inform the shareholders of the full climate impacts of—and risks associated with—their invested dollars.

Indeed, all the rationales the Commission provides for requiring an attestation for Scope 1 and 2 emissions apply equally to Scope 3.

Moreover, critics' arguments that they should be exempt from any accountability for Scope 3 emissions reporting because those calculations may be more difficult than Scope 1 and 2 emissions reporting turns the SEC's reporting regime on its head. To be sure, we agree that it is more unlikely that the Commission will pursue enforcement action relative to Scope 3 emissions. However, so long as a registrant is working in good faith to measure these emissions, there is simply no reason for concern that requiring the attestation would lead to any kind liability.³⁶

On the other side of the coin, however, the greater difficulty in collecting and accurately reporting Scope 3 emissions makes the attestation requirement *even more* important, to ensure that reporting companies devote adequate time and resources to *accurately* collecting and disclosing this information. Accordingly, the Commission should adopt the suggested alternative of removing any safe harbor provision for Scope 3 emissions.³⁷

b. The Commission Must Mandate Scope 3 Disclosures
[NOPR Questions 98-103]

The Commission's failure to require companies to attest to the accuracy of their Scope 3 emissions is a serious weakness in the NOPR. However, making matters even worse, under the NOPR companies will not be required to disclose of Scope 3 emissions *at all* so long as they deem these emissions not material, and do not have emission reduction goals that include Scope 3 emissions.³⁸ This loophole must also be closed.

As a threshold matter, it makes no sense to allow reporting companies to make their *own* materiality determinations regarding Scope 3 emissions. The NOPR itself explains in detail why these emissions are material, and does not justify any departure from the Commission's approach to Scope 1 and 2 emissions. To the contrary, the NOPR explains that the Commission expects Scope 3 emissions to be material for "many registrants."³⁹ The NOPR similarly explains that doubts about materiality should be resolved in favor of investors.⁴⁰ Accordingly, these disclosures should be required across the board.⁴¹

³⁶ E.g., *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

³⁷ NOPR at 21,450.

³⁸ NOPR at 21,345.

³⁹ NOPR at 21,378.

⁴⁰ *Id.*

⁴¹ See also NOPR at 21,379 (summarizing comments explaining why "disclosure of a registrant's Scope 3 emissions is essential to" investors).

Indeed, as the NOPR itself notes, by allowing companies to decide that Scope 3 emissions are not material – and thus need not be reported – registrants will have incentives to outsource activities that otherwise might be included in Scope 1 and Scope 2 emissions, to thereby avoid them from being reported altogether.⁴² By removing this reporting exemption, the Commission can avoid such gamesmanship as companies seek to show progress on their emissions reductions. In short, as the Commission has explained, it is only by requiring Scope 3 emission reporting that the Commission can insure “greater transparency and help preclude any efforts by registrants to obscure” the full scope of their emissions.⁴³

Moreover, this loophole will no longer be tenable once the Commission establishes a uniform approach to the attestation requirement, mandating that companies attest to the accuracy of their Scope 3 emissions. In short, the liability associated with the attestation requirement counsels in favor of clear and transparent rules that both companies and investors can follow, as the Commission has done with Scope 1 and 2 emissions.

Mandating Scope 3 emission disclosures where a registrant has set emission reduction goals that included Scope 3 emissions in no manner resolves these concerns. To the contrary, this approach also risks changing company incentives in a manner that undermines the NOPR’s disclosure objectives. In particular, if a company can avoid Scope 3 emission disclosures by no longer including them in their goals and targets, this may result in companies both disclosing less *and* having fewer emission reduction targets.

Mandating Scope 3 emissions disclosures will also help address the current greenwashing problems – which are particularly prevalent in the utility industry – where companies regularly make public statements concerning their commitment to a rapid transition to clean energy that are entirely inconsistent with their existing and planned investments in fossil fuel infrastructure.⁴⁴ By requiring companies to report these emissions, the Commissions will drive these companies to more accurate public statements, reducing their exposure to fraud allegations by investors.

Mandating these disclosures is also consistent with the approach reviewing courts have taken to the responsibility of GHG emitters to calculate the upstream and downstream emissions associated with federally-approved projects. *See, e.g., Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). In that context, courts have rejected the argument that these emissions are somehow irrelevant to understanding the impacts that these projects will have on the environment under the National Environmental Protection Act, 42 U.S.C. § 4321, *et seq.* Analogously here, it is evident that the Scope 3 emissions of reporting companies are material to investors in understanding registrant’s climate impacts and risks.

⁴² NOPR at 21,379.

⁴³ NOPR at 21,3279.

⁴⁴ *See, e.g.,* Dan Gearino, *Utilities Are Promising Net Zero Carbon Emissions, But Don’t Expect Big Changes Soon*, Inside Climate News, Oct. 15, 2019, <https://insideclimatenews.org/news/15102019/utilities-zero-emissions-plans-urgency-coal-gas-duke-dte-xcel/>; Center for Biological Diversity, *Utility Greenwashing in Websites and Investor Reports*, 2019, <https://tinyurl.com/yc3cufja>.

Finally, the Commission should not craft exclusions for Scope 3 emissions based on cost concerns. The NOPR details that collecting this information will not be prohibitively expensive, and these disclosures only apply to larger companies in any event.⁴⁵ In sum, the value of this vital information to investors far outweighs the minimal expenditures collecting this information will cost companies – costs that will invariably drop dramatically once companies incorporate these disclosures into their normal business operations.⁴⁶

Accordingly, in order to make these climate change disclosures valuable to investors, they must include Scope 3 emissions, without exceptions.

2. The Commission Should Also Strengthen, And Not Weaken, Other Aspects Of The Emissions Reporting Requirements [NOPR Questions 96-108]

Among other questions, the NOPR asks whether the disclosures should require registrants to separately disclose Scope 1, 2 and 3 emissions, as well as the different categories of emissions in each Scope 3 category. The NOPR also asks whether companies should be required to disclose relevant information concerning the locations of emissions.

Once again, the discussion in the NOPR, and the comments it summarizes, demonstrate that these additional details are necessary for meaningful climate change disclosures.⁴⁷ As regards categories of Scope 3 in particular, which cover a wide variety of critical upstream, and downstream, emissions, it is vital that registrants are not permitted to make some kind of aggregated disclosure. Rather, the details on emissions associated with each category are critical for investors to assess both a company's climate risks, as well as the accuracy of commitments it may be making to reduce its indirect emissions.

It is also critical that the Commission not permit registrants to incorporate any information regarding carbon offsets or other third-party credit for emission reduction into their climate change disclosures. The Commission notes some of the limitations of carbon offsets⁴⁸, but in fact offsets are much more problematic than the NOPR suggests.

⁴⁵ It bears emphasizing that there is no evidence to support the bald assertion that smaller companies beyond the SEC's jurisdiction will be forced to collect emissions information to comply with Scope 3 reporting requirements. See Avery Ellfeldt, *SEC climate rule sparks backlash from business groups*, E&E Climatewire June 2, 2022, <https://subscriber.politicopro.com/article/eenews/2022/06/02/sec-climate-rule-sparks-backlash-from-business-groups-00036556>. Rather, it is well-recognized that companies will have options to calculate and report these emissions without requiring suppliers themselves to do anything at all. See, e.g. GHG Protocol, *Technical Guidance for Calculating Scope 3 Emissions* (WRI 2013), https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf.

⁴⁶ See, e.g., Eban Goodstein, *Polluted Data*, American Prospect, Nov.-Dec. 1997, <http://prospect.org/article/behind-numbers-polluted-data> (finding agency compliance cost estimate predictions to be more than twice the actual costs in eleven out of twelve cases).

⁴⁷ NOPR at 21,350.

⁴⁸ NOPR at 21,355.

Carbon offsets do not “offset” fossil fuel production. However, a carbon offset market considers all GHGs as “equivalent” without acknowledging that offset credits can never be climatically equivalent to keeping fossilized carbon underground.⁴⁹ Fossil carbon emissions are effectively *permanent*, coming from reservoirs deep in the earth where they have been stored for millions of years. When burned, the carbon pollution remains in the atmosphere for hundreds to thousands of years. In contrast, crops, soils, oceans, and forests used for nature-based offsets are “fast-exchange” carbon reservoirs that have limited carbon storage capacity and can release carbon back into the atmosphere over the course of a few decades, or sometimes even over a few days. Offsets confuse this basic science by wrongly treating the Earth’s biosphere as an endless source of potential storage for fossil carbon emissions.

Offsets based on carbon capture and storage (CCS) are similarly flawed. As an initial matter, CCS does not remove carbon from the atmosphere, although it is often erroneously conflated with “CO₂ removal” or “negative emission” technology. At best, CCS prevents some CO₂ produced from burning fossil fuels and other carbon-based fuels from reaching the atmosphere, provided that these carbon emissions are stored forever and never released. But the fossil fuel industry also has a long, consistent track record of spills and leaks, including massive methane leakage from abandoned wells and well blowouts.⁵⁰ It is inevitable that stored CO₂ will escape back into the atmosphere through abandoned oil and gas wells, well failures, earthquakes, and other pathways.⁵¹ Even small leakage rates can lead to large releases of CO₂.⁵² Compounding this problem, current U.S. federal regulations do not require permanent storage of injected CO₂ underground. For CCS to qualify for government subsidies, federal regulations require storage of CO₂ for *only 50 years*. This kicks the can down a very short road, to be a burden to the next generation.

Carbon offset also perpetuate environmental injustice, since greenhouse gas emitting industries are disproportionately sited in poor communities and communities of color, causing them to bear the brunt of pollution. Offset schemes increase pollution in these communities, worsening environmental injustice.⁵³ Finally, offsets can result in violations of the rights of Indigenous and tribal peoples. Satisfying those market demands for offsets in the near term will require access to huge expanses of land and forest, lands already occupied by Indigenous Peoples and local

⁴⁹ Mackey, B. et al., Untangling the confusion around land carbon science and climate change mitigation policy, 3 *Nature Climate Change* 552 (2013).

⁵⁰ Williams, James P. et al., Methane emissions from abandoned oil and gas wells in Canada and the United States, 55 *Environmental Science and Technology* 573 (2020), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.0c04265>; Conley, S. et al., Methane emissions from the 2015 Aliso Canyon blowout in Los Angeles, CA, 351 *Science* 1317 (2016).

⁵¹ See e.g., Zoback, Mark D. & Steven M. Gorelick, Earthquake triggering and large-scale geologic storage of carbon dioxide, 109 *PNAS* 10164 (2012), <https://doi.org/10.1073/pnas.1202473109>.

⁵² Vinca, Adriano et al., Bearing the cost of stored carbon leakage, 6 *Frontiers in Energy Research* 40, doi: 10.3389/fenrg.2018.00040.

⁵³ Cushing, L. et al., Carbon trading, co-pollutants, and environmental equity: Evidence from California’s cap and trade program (2011-2015), 15 *PLoS Med* e1002604 (2018).

communities. As such, Indigenous lands are increasingly targeted by forest offset project developers, creating pressure and division in Indigenous communities.⁵⁴

Finally, as to location data, as the NOPR explains, precisely “[b]ecause physical risks can be concentrated in particular geographic areas,” disclosing location information will “allow investors to better assess the risk exposure of one or more registrants with properties or operations in a particular area.”⁵⁵ At the very least this should include zip codes, allowing some review of the risks associated with particular locations – which the NOPR explains can “help investors more accurately assess a registrant’s specific risk exposure.”⁵⁶ However, in the absence of any security or other valid concern, we recommend requiring disclosure of specific address information, as that will allow even better identification of risks. Indeed, some zip codes cover enormous geographic areas that will not be sufficient to allow a risk assessment based on zip codes alone. One Nevada zip code, for example, is over 10,000 square miles, which is larger than the State of Maryland.⁵⁷

3. The Commission Should Mandate Accountable Disclosures More Quickly Than Proposed In the NOPR [NOPR Questions 135-140 and 197-201]

While the NOPR recognizes the importance of accountable disclosures of at least Scope 1 and Scope 2 emissions, the NOPR is riddled with delays that move real accountability far off into the future, allowing reporting companies far too much time to come into compliance. The NOPR does even worse for Scope 3 emissions. These loopholes should be closed.

First, while there may be a basis for some accommodation for small reporting companies, the Commission should move up the initial compliance dates for all other companies from 2024 to fiscal year 2023. Given that companies will have *an entire year* to accommodate these new requirements, there is simply no basis to giving a *carte blanche* extension of another year to many companies, as proposed.⁵⁸ We are also extremely concerned that by giving those companies two years to come into basic compliance, they will fail to devote resources to this initiative and then plead – close to the two-year deadline – that they need even more time. In short, it would best serve the Commission’s objectives to keep a uniform deadline for all these companies, beginning with fiscal year 2023.

Second, while the NOPR details the importance, and value, of requiring appropriate attestations regarding these climate change disclosures⁵⁹, the Commission is incongruously again proposing

⁵⁴ Osborne, T. et al., *Indigenous Peoples and REDD+: A Critical Perspective*, Indigenous People’s Bicultural Climate Change Assessment Initiative (November 2014); Carbon Market Watch, *The Clean Development Mechanism: Local Impacts of a Global System* (October 2018)

⁵⁵ *Id.*

⁵⁶ NOPR at 21,350.

⁵⁷ See Zip Codes in the U.S., GeographyRealm, <https://www.geographyrealm.com/zip-codes-in-the-united-states/>

⁵⁸ NOPR at 21,412.

⁵⁹ NOPR at 21,393-94.

an unreasonably long phase-in period for these attestation.⁶⁰ Indeed, under the NOPR, some filers will not be required to provide reasonable assurances as to the accuracy of the filings *until 2028*, and even limited assurances do not begin for any filers until 2025.⁶¹ There is simply no basis for delaying these requirements in this fashion, which will only serve to undermine the value of these disclosures for years to come.⁶²

Finally, as for Scope 3 emissions, the Commission should not give all filers an extra year to even begin making these disclosures, *until 2026*, as proposed.⁶³ Rather, the compliance date should be uniform with Scope 1 and 2 disclosures. Once again, filers will have an *entire year* to collect the necessary information, and are on notice *more than six months earlier*, with this NOPR, that these disclosures will be required. Given this extremely long lead time, there is simply no basis to delay the reporting requirements for Scope 3 emissions in this manner.

Moreover, combining this unwarranted extension with the Commission's otherwise entirely lax approach to Scope 3 emissions, as discussed above, is fundamentally incongruent with the importance of Scope 3 emissions disclosures to understanding a registrants' climate risks and how it is approaching them. In short, given the record before the Commission as to the value of Scope 3 emissions, they must be required more quickly and more uniformly, in an accountable fashion as the Commission contemplates for Scope 1 and 2 emissions.

4. The Commission Should Expand The Scope Of The Required Disclosures To Ensure That All Material Information Is Disclosed, Particularly From Utilities.

When the Commission set out its initial list of questions for updating its Climate Change Disclosures last year, one of the questions was whether there should be unique reporting standards for particular industries (Question 4).⁶⁴ Although we urged the Commission to craft separate disclosure requirements for utilities,⁶⁵ thus far the Commission has not done so. While many of the additional disclosure matters discussed below could be applied to all registered companies, we urge that at minimum the Commission include these disclosures for utility companies.

Utility companies are unique sector among the registrants regulated by the Commission, for multiple reasons. First, they generally function as monopolies whose customers do not choose

⁶⁰ NOPR at 21,292.

⁶¹ *Id.*

⁶² For the same reasons, the Commission should reject the alternative of relying on an unaccountable report, rather than a file, compliance approach. *See* NOPR at 21,449 (discussing this alternative).

⁶³ NOPR at 21,412.

⁶⁴ SEC, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021), <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

⁶⁵ Center May 26, 2021 Comments on Climate Change Disclosures.

their products and instead are compelled to pay the utility due to a century-old system whereby state governments permit utilities local service territories and dependable revenues in exchange for being regulated by state-level utility commissions.⁶⁶ With that regulation comes the responsibility to act in the public interest, including by providing 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. Their public interest mandate also elevates their responsibility to rapidly transition from fossil fuels, which is fueling the climate emergency impacting their captive ratepayer customers.

Second, utilities are unique in terms of their heavy fossil fuel investments, and substantial contribution to the climate emergency.⁶⁷ Indeed, as noted, approximately 25% of the nation's GHG emissions come directly from utilities.⁶⁸ Not surprisingly then, particularly given investor interest in the clean energy transition, utilities across the country have announced clean energy transition ambitions.⁶⁹

Third, utilities function as the lynchpin for climate action. The climate emergency mandates that our power systems maximize clean energy. The ability to bring clean energy online lies with utilities in our current power delivery system; the choices they make of their portfolios play an outsized role in how society will address the climate crisis. Therefore, of all industries, the utility industry is at the frontline of climate action – and should be subject to higher levels of climate risk disclosure.

However, precisely because of their majority fossil fuel investments, utilities are at the forefront of the fight *against* the clean energy transition, in multiple ways. Indeed, recently a coalition of advocates submitted a detailed Petition to the Federal Trade Commission calling for an investigation into utilities' anti-competitive and deceptive acts designed to preserve their fossil fuel investments – actions directly at odds with their publicly stated commitments to clean energy.⁷⁰

⁶⁶ See, e.g., Scott Hempling, *Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* (2020).

⁶⁷ 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.

⁶⁸ U.S. Environmental Protection Agency, *Sources of Greenhouse Gas Emissions* (2019), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>.

⁶⁹ 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).

⁷⁰ See Petition for FTC Investigation into the Electric Utility Industry's Abusive Practices that Stifle Renewable Energy Competition and Harm Consumer Protection (May 18, 2022), <https://www.biologicaldiversity.org/programs/energy-justice/pdfs/FTC-Petition-Re-Utilities-2022-05-16.pdf>. As detailed in the Petition, for the last several decades the electric utility companies have been facing both emerging new technologies, particularly renewable energy sources like solar and wind, and flattening and even declining sales – development that undermine the traditional utility business model predicated on never-ending investments to meet growing demand. In response, utility companies have been engaging in anti-competitive and deceptive acts designed to maintain their hold on power, including their reliance on centralized fossil fuel generation.

Moreover, to protect their members' fossil fuel investments, utility *trade associations* have also been highly active in advocacy against the clean energy transition. For example, the Edison Electric Institute ("EEI"), the trade group for electric utilities, trains utility executives to oppose clean energy policies; funds groups fighting against clean air and clean water regulations; and has worked to sow doubt about climate science. Last year, the Center for Biological Diversity submitted a Petition to the Federal Energy Regulatory Commission seeking to address the fact that *ratepayers are being forced to pay* for this advocacy.⁷¹

Given these stark facts, there are several areas where the climate change disclosures should be strengthened, particularly for utilities.

First and foremost, it is vital that the disclosures include pertinent information concerning registrant's anti-climate political activities. This must include 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.⁷² 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.⁷³

As documented in a recent Report, numerous utility companies actively work to thwart climate policies that might affect their operations.⁷⁴ Indeed, as noted above, in recent years there have been a long string of utility abuses tied to their ongoing efforts to thwart clean energy

⁷¹ 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.

⁷² 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>.

⁷³ See *supra* n.71.

⁷⁴ The U.S. Power Sector and Climate Policy (Apr. 2022), <https://influencemap.org/report/The-U-S-Power-Sector-and-Climate-Policy-18074> ("U.S. utilities employ a range of tactics, from public messaging and legislative testimony to astroturfing and corruption, to achieve policy aims at every level and body of government. For example, most of the 25 utilities including sector leaders use a mixture of public messaging, testimony, and coalition-building to promote fossil gas. Several relied on direct engagement with policymakers to oppose climate provisions in the U.S. Build Back Better Act. Others have used more extreme measures like astroturfing and bribery to challenge climate policy at the state level.").

competition and preserve their fossil fuel investments.⁷⁵ It is therefore vital that the climate change disclosures address these expenditures and efforts.

Indeed, these expenditures *exacerbate* the climate change risks these companies face – particularly to the extent they are successful in delaying the renewable energy transition, thereby increasing the expenses they will experience in seeking to provide reliable service under more extreme weather conditions. Accordingly, these expenditures are highly material to investors and should be expressly included in any disclosure regime.

The March 15, 2022 letter the Commission received from a group of U.S. Senators further highlights the need for these particular disclosures.⁷⁶ As the Senators explained, it is vital that the Commission require “disclosures about corporate lobbying and other influencing activities as they relate to climate change,” as these disclosures are both critical to investors, and “directly related to companies’ exposure to climate-related physical and transition risks.” In short, exposing the relationships between utilities’ political activities and their climate risk mitigation and adaptation strategies will increase much-needed transparency, and highlight ways in which utilities’ political activities may ultimately undermine and pose further risks to their business model in a decarbonizing economy.⁷⁷

Second, the Commission should enclose energy justice and equity concerns into the climate change disclosures, particularly for utilities, 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.”⁷⁸ Thus, the Final Rule 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.

Moreover, as the Nation experiences more extreme weather conditions fueled by the climate emergency, the connection between climate change and maintaining utility service has become increasingly important. Similarly, the ways in which utilities treat their customers – including by shutting off their power during the pandemic – brings serious reputational risks that are material to investors.

⁷⁵ See *supra* n.70.

⁷⁶ Mar. 15, 2022 Letter to Chair Gary Gensler, <https://www.sec.gov/comments/s7-10-22/s71022-20126843-287556.pdf>.

⁷⁷ Seeking to avoid these disclosures, the utility trade groups have urged the Commission to look to their voluntary disclosure regimes. See June 2, 2021 Letter from EEI and AGA, <https://www.sec.gov/comments/climate-disclosure/c1112-8861705-240106.pdf>. However, not surprisingly, these disclosures do not contain any of this highly relevant information. At the same time, we note that we agree with the trade associations as to the value of sector-specific requirements. *Id.* at 3, 7, 9.

⁷⁸ See 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/>.

For example, a recent Report showed how utility companies that shut off *millions* of customers during the pandemic received more than a billion dollars in federal aid money, and have had record profits they used to reward top executives and shareholders rather than protecting their customers from losing essential services.⁷⁹ However, only a small subset of utilities provide disconnection data.⁸⁰ Particularly given the fact that existing data shows how private utility companies – which are statutorily mandated to act in the public interest – are raking in record profits while at the same time their customers are suffering from a lack of essential utility service, it is evident that requiring uniform disclosure of disconnection and related data would be material to investors, given that it reflects serious reputational risks for these companies.⁸¹

Accordingly – and as more fully set out in our earlier comments⁸² – the Commission should require utility companies to disclose information related to energy affordability, insecurity, arrearages and shut-offs, and how their operations disproportionately impact environmental justice communities in climate disaster situations.

Third, 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 also crucial that utilities fully disclose the risks and opportunities associated with the renewable and clean energy transition itself. 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 the NOPR notes, like other companies, utilities have been announcing transition plans. It is therefore vital to investors that the 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. As noted, Reports have shown that the climate goals reported by utilities are entirely inconsistent with their ongoing construction of fossil fuel assets, and thus it is vital that the SEC police and require truthful disclosure to avoid fraudulent activity.⁸³

Fourth, these disclosures should include details regarding whether companies – and, again, particularly utilities – have tied executive compensation to their progress on such matters as

⁷⁹ See *Powerless in the Pandemic 2.0* (2022), https://bailout.cdn.prismic.io/bailout/ddebd6e2-b136-4dc8-a1da-f6d4583b4c24_Powerless_Report2022_final.pdf;

⁸⁰ *Id.*

⁸¹ See, e.g., 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>.

⁸² See Center June 11, 2022 Comments, <https://www.sec.gov/comments/climate-disclosure/cll12-8911759-244398.pdf>.

⁸³ See *supra* n.14.

reducing operational emissions, achieving decarbonization and/or climate action goals, and otherwise supporting the clean energy transition.⁸⁴ 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 how their compensation approach interacts with their public-facing environmental commitments. Once again, this information is material to investors seeking to understand these companies' approach to managing climate risks.

Finally, regulated utility companies are often owned by holding companies that do not themselves operate utility assets, thereby potentially shielding important information from disclosures.⁸⁵ It is therefore imperative that utility disclosures include both holding companies, and all subsidiaries. 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.

Conclusion

We appreciate the opportunity to comment on the NOPR. Please do not hesitate to contact us if there is any further information we can provide.

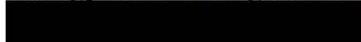
Sincerely yours,

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/s/ Howard M. Crystal
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/s/ Jean Su
Energy Justice Program Director



⁸⁴ 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).

⁸⁵ 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.”).

CLIMATE EMERGENCY ADDENDUM

The Intergovernmental Panel on Climate Change (IPCC), the international scientific body for the assessment of climate change, concluded in its *Climate Change 2021: The Physical Science Basis* report that: “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred,” and further that “[t]he scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented over many centuries to many thousands of years.”⁸⁶

The U.S. federal government has also repeatedly recognized that human-caused climate change is causing widespread and intensifying harms across the country in the authoritative National Climate Assessments, scientific syntheses prepared by hundreds of scientific experts and reviewed by the National Academy of Sciences and federal agencies. Most recently, the Fourth National Climate Assessment, comprised of the 2017 *Climate Science Special Report (Volume I)*⁸⁷ and the 2018 *Impacts, Risks, and Adaptation in the United States (Volume II)*,⁸⁸ concluded that “there is no convincing alternative explanation” for the observed warming of the climate over the last century other than human activities.⁸⁹ It found that “evidence of human-caused climate change is overwhelming and continues to strengthen, that the impacts of climate change are intensifying across the country, and that climate-related threats to Americans’ physical, social, and economic well-being are rising.”⁹⁰

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 2050.⁹¹

⁸⁶ Intergovernmental Panel on Climate Change, Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/> at SPM-5 and SPM-9.

⁸⁷ U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. I* (2017), <https://science2017.globalchange.gov/>.

⁸⁸ U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States, Fourth National Climate Assessment, Vol. II* (2018), <https://nca2018.globalchange.gov/>.

⁸⁹ U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. I* (2017), <https://science2017.globalchange.gov/> at 10.

⁹⁰ U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States, Fourth National Climate Assessment, Vol. II* (2018), <https://nca2018.globalchange.gov/> at 36.

⁹¹ 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).

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.⁹² 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.⁹³

Accordingly, many studies have also demonstrated the number of lives that can be saved through rapid GHG emission reductions.⁹⁴ 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.”⁹⁵ 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.⁹⁶

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.⁹⁷ The IPCC issued a very similar warning in 2014,⁹⁸ and the evidence that the climate system is

⁹² NCA4, Vol. II at 34 and 1347.

⁹³ 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).

⁹⁴ 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).

⁹⁵ 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).

⁹⁶ 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).

⁹⁷ 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.

⁹⁸ 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.”).

approaching these tipping points only further demonstrates the urgent need for immediate action to address these threats.⁹⁹

The global average atmospheric carbon dioxide in 2020 was 412.5 parts per million (ppm), a level not seen for millions of years.¹⁰⁰ The last time CO₂ 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.¹⁰¹ The current atmospheric CO₂ 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.¹⁰² The atmospheric concentrations of methane (CH₄) and nitrous oxide (N₂O), two other potent GHGs, are more than 257 % and 122 % of their pre-industrial levels.¹⁰³ 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,¹⁰⁴ which is projected to lead to devastating impacts.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷ For electricity in particular, the share of renewable energy must reach 60% by 2030 and 77% by 2050.¹⁰⁸

⁹⁹ 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).

¹⁰⁰ See Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide*, *Climate.gov*, <https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>.

¹⁰¹ 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.

¹⁰² 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.

¹⁰³ *Id.* at 2.

¹⁰⁴ 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*)”).

¹⁰⁵ 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.

¹⁰⁶ *Id.* at 15.

¹⁰⁷ IPCC Special Report, at 112.

¹⁰⁸ IPCC Special Report, Summary for Policymakers, at 12.

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.¹⁰⁹ The 2018 IPCC special report on *Global Warming of 1.5°C* estimated the carbon budget for a 66% probability of limiting temperature rise to 1.5°C at 420 GtCO₂ and 570 GtCO₂ from January 2018 onwards, depending on the temperature dataset used.¹¹⁰ The IPCC Sixth Assessment updated the remaining carbon budget from the beginning of 2020 at 400 GtCO₂ for a 67% probability of meeting the 1.5°C limit and 500 GtCO₂ for a 50% probability of 1.5°C.¹¹¹ At the current global emissions rate of 42 GtCO₂ per year, the entire global carbon budget would be used up in a decade or so. Notably, the U.S. carbon budget is far smaller than the global carbon budget. Most estimates of the remaining U.S. carbon budget consistent with keeping temperature rise below 1.5°C are negative or near zero, depending on the equity principles used to apportion the global budget across countries.¹¹² It is therefore imperative that the United States reduce its GHG emissions as rapidly as possible – which is among the reasons corporate climate disclosures are highly relevant to investors.

¹⁰⁹ 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 CO₂ emissions by country).

¹¹⁰ Intergovernmental Panel on Climate Change, *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 (Oct. 6, 2018), <http://www.ipcc.ch/report/sr15/> at SPM-16.

¹¹¹ Intergovernmental Panel on Climate Change, *Summary for Policymakers In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/> at SPM-38.

¹¹² Van den Berg, Nicole *et al.*, Implications of various effort-sharing approaches for national carbon budgets and emission pathways, *Climatic Change* 162: 1805-1822 (2020), <https://link.springer.com/article/10.1007%2Fs10584-019-02368-y> (showing a range for the U.S. carbon budget for 2010-2100 of ~10 GtCO₂ to -90 GtCO₂ for a 1.5°C limit at Figure 4); Dooley, Kate *et al.*, Ethical choices behind quantifications of fair contributions under the Paris Agreement, 11 *Nature Climate Change* 300 (2021), <https://www.nature.com/articles/s41558-021-01015-8>.