INSTITUTE FOR 21ST CENTURY ENERGY
U.S. CHAMBER OF COMMERCE

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Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

Re: File Number S7-42-10; Disclosure of Payments by Resource Extraction Issuers

Ms. Murphy:

The Institute for 21st Century Energy (Energy Institute), an affiliate of the United States Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, as well as state and local chambers and industry associations, is pleased to submit these written comments on the Securities and Exchange Commission's proposed rules regarding Disclosure of Payments by Resource Extraction Issuers (the "Proposing Release") pursuant to section 13(q) of the Securities Exchange Act of 1934 ("the Exchange Act").

The economic impacts, and perhaps more importantly, the threat to the country's energy security and economic growth, should compel the Commission to advance this rulemaking with a balanced and comprehensive approach, allowing the Commission to fulfill mandates to implement Section 13(q), while also promoting competition and efficiency, and protecting investors.

The Energy Institute also believes that incorporating our key recommendations into the final rules is essential in order for the Commission to comply with the spirit and intent of President Obama's January 18, 2011 Executive Order on Improving Regulation and Regulatory Review. Among other things, the Executive Order makes clear that regulatory action should promote economic growth and competitiveness; use the least burdensome means for achieving regulatory ends; and take into account benefits and costs, both quantitative and qualitative. Given the far-reaching potential impacts of this proposed rule, compliance with the Executive Order is essential for minimizing impacts to the country's nascent economic recovery as well as job preservation.

The Commission's Obligation to Implement Section 13(q) Consistent with Other Mandates

In the proposed rule the SEC proposal has estimated that the affected companies will be burdened with $11,857,200 in compliance costs, as well as nearly 53,000 of additional company hours expended on compliance and that the disclosures may impact at least 861 companies. The cost-benefit analysis fails to show any benefits to investors, the marketplace or capital formation. Under Section 23(a) (2) the Exchange Act, in promulgating rules, the Commission must consider the impact that any rule may have on competition and it is prohibited from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Act's purposes. Notwithstanding the issues at hand, these are the standards the SEC must meet in promulgating a rule.

While the legislative history of Section 13(q) is sparse, its purpose is clear: to enhance international efforts to make governments more transparent and accountable in connection with the commercial development of their nation's natural resources. Section 13(q) seeks to achieve this goal by requiring new payment disclosure from certain companies (specifically, issuers engaged in commercial development of oil, natural gas, or mineral resources that file annual reports with the Commission) and by requiring the Commission to make a compilation of that information available to the public.

The core mission of the Commission, as reflected in Section 3(f) of the Exchange Act, is to protect investors and to promote competitive and efficient capital markets. Section 13(q) represents a deviation from this long-standing mission, in that the purpose of Section 13(q) is ultimately to influence the behavior of governments. As explained in the letter dated November 5, 2010, to the Commission from Cravath, Swain & Moore LLP and seven other leading law firms, Section 13(q) does not repeal or override the Section 3(f), Section 23(a)(2), or any other existing provisions of the Exchange Act. Thus, the Commission must implement Section 13(q) in a manner that is both faithful to the statute and consistent with the other provisions of the Exchange Act.

Potential for Competitive Harm

The Energy Institute fully supports government accountability through international transparency efforts, especially the Extractive Industries Transparency Initiative ("EITI"). The stated intent of Section 13(q) is to support EITI, and we support rulemaking consistent with that intent. To the extent the implementing rules under Section 13(q) diverge from the EITI framework, such rules carry great potential to harm investors, reduce competition, and impair market efficiency.

If the rules under Section 13(q) require public disclosure of unnecessarily detailed information, such disclosure will provide competitors, specifically foreign government owned companies, not covered by section 13(q) with sensitive commercial information and place covered U.S. companies at a competitive disadvantage. Unless implemented properly, Section 13(q) could also undermine many years of progress on international transparency through the EITI process. It is quite difficult to envision a country supporting disclosure of information that could harm its vital national interest, especially if the harmful disclosure can be avoided by choosing to do business with a firm not subject to the filing requirements.

Potential Harm to Energy Security

It is important for the Commission to understand that entities covered by this rulemaking represent a small percentage of the global energy market and are not afforded the market power to compel host countries to enter into agreements that are subject to disclosure and against their national interest. Over 90% of the world's oil reserves are owned or controlled by National Oil Companies (NOCs), none of which will be required to comply with Section 13(q). In many cases, NOCs already maintain competitive advantage over U.S. companies by exploiting governmental financing and not being subject to environmental, financial, and competitive restrictions placed upon U.S. companies. As NOCs amass even greater shares of global reserves, American energy security is put at even greater risk.

Potential Harm to Economic Growth

The oil and natural gas industry provides nearly two-thirds of the primary energy consumed in the United States, including more than 95% of all transportation fuel consumed. Moreover, this vital industry supports more than 9 million American jobs, while millions of additional Americans invest in companies from the affected industry. It is because of the pervasive nature of petroleum and petroleum products that the true impact of the proposed rule will be felt by every business and every household throughout the country. The proposed rule will not only add costly and burdensome reporting expenses, it will inherently make the U.S. oil and natural gas industry less competitive in the global market. This has the potential to lead to higher prices for consumers in addition to more instability in supply and price.

Key Areas for Commission Rulemaking Discretion

The Energy Institute firmly believes the Commission has sufficient discretion to implement Section 13(q) in a manner that is both true to the language and purpose of that provision, and is consistent with the Commission's obligations to protect investors and promote competition and efficiency.

Key areas of Commission discretion include:

- ***Public disclosure of individual filings.*** Based upon discussions with outside counsel we now believe that section 13(q), read in the context of the other provisions from the Dodd-Frank Wall Street Reform and Consumer Protection Act, does not require that the specific reports filed by issuers themselves be publicly available. Rather, we are noting that the only reporting obligation is to the SEC, which is then *required* to make a "compilation" available. The overall organization of the section 13(q) amendment to the Exchange Act reflects this understanding of the statutory obligations. While Section (2) deals with "Disclosure" and specifies the information that must be reported by issuers to the Commission, Section (3) separately addresses "Public availability of Information." Thus, we believe that Congress did not contemplate that the information reported to the Commission would be directly disclosed to the public and instead requires the Commission to compile this information and make available such an appropriately edited and arranged compilation. We believe that this interpretation supports the need to recognize the proprietary nature of the information and public policy of keeping such individual information confidential while still meeting the general legislative goal of providing information on payment flows to governments from resource extracting activities.

- ***Aggregation of publicly available information.*** Unlike other provisions of the Dodd-Frank Act such as Section 1503, Section 1504 allows discretion for the Commission to aggregate information made available to the public in the form of a compilation. This discretion allows the Commission to implement Section 13(q) in a manner consistent with EITI principles as required by the section. Specifically, aggregating data from multiple companies into a compilation made available to the public should, in most cases, protect companies from disclosure of competitively sensitive information and from violation of laws prohibiting disclosure of specific commercial terms, while also providing the required disclosure.

- ***Project definition***. The Commission should also exercise its discretion in defining the term "project" for which data must be reported. An appropriately broad definition that allows issuers to aggregate data from multiple agreements relating to the same underlying resource could do much to alleviate company concerns. The Commission also has discretion to limit disclosure to projects that are "material" to an issuer. Section 13(q) defines the term "payment" to mean payments that are "not de minimis," but no such requirement applies to the term "project". Thus, the Commission has discretion to limit disclosure to material projects, for which projects all non-de minimis payments would be reported.

- ***Exemptions to protect commercially sensitive information and disclosures prohibited by applicable law.*** We believe these concerns are most appropriately addressed by limiting public disclosure to a compilation of information from multiple companies consistent with EITI principles. However, to the extent the Commission does not use this approach, the Commission must create express disclosure exemptions. An exemption for commercially sensitive information could be implemented consistent with long-standing practice under the Freedom of Information Act, while an exemption for legally prohibited disclosure could be structured along the lines of Item 1202 of Regulation S-K.

Conclusion

The stated and fundamental purpose of amending the Exchange Act is to ensure appropriate disclosure consistent with EITI principles. The Commission has an opportunity to implement Section 13(q) in a fashion that is consistent with this purpose, while also preserving the competitiveness of U.S. extractive industries companies, thereby limiting harm to covered companies, as well as the country's economic and energy security. We urge the Commission to exercise its discretion as outlined above to ensure such negative consequences do not result.

The Energy Institute thanks the Commission for allowing interested parties the opportunity to comment.

Sincerely,

Karen A. Harbert