Dear Madam Secretary,

We are respectfully submitting this petition to the U.S. Securities and Exchange Commission (the “Commission”) requesting that it take appropriate action to prevent and prohibit registrants from making materially false and misleading claims and statements related to global climate change.

I. Background

The Commission issued guidance specific to climate in “Guidance Regarding Disclosure Related to Climate Change” in 2010 (the “2010 Guidance”).

In addition to any climate change-related disclosures ordinarily required by other Commission rules, the 2010 Guidance suggested four other climate-related areas subject to disclosure: i.e., business risks from (1) legal/regulatory impacts; (2) international agreements; (3) business trends; and (4) weather/physical events.

This petition does not seek to alter that risk-oriented disclosure guidance.
Rather, this petition requests that the Commission take action to prevent and prohibit registrants from making false and misleading climate-related claims about their own actions.

II. Today’s Climate Change Reality

To understand the false and misleading nature of climate-related claims being made by registrants, it is necessary to review some basic facts about manmade greenhouse gas emissions. Whatever one’s views are of the state and implications of climate science, the facts presented below are not in dispute.

Fact 1. Manmade greenhouse gas emissions are presently about 53.5 BILLION tons (CO₂-equivalent) annually.

The United Nations Environment Programme (UNEP) issued its “Emissions Gap Report 2018” last November.²

The UN report estimates includes that global manmade emissions of greenhouse gases are 53.5 BILLION tons of carbon dioxide-equivalent annually (See underscored text, below).

2. Global greenhouse gas emissions show no signs of peaking. Global CO₂ emissions from energy and industry increased in 2017, following a three-year period of stabilization. Total annual greenhouse gases emissions, including from land-use change, reached a record high of 53.5 GtCO₂e in 2017, an increase of 0.7 GtCO₂e compared with 2016. In contrast, global GHG emissions in 2030 need to be approximately 25 percent and 55 percent lower than in 2017 to put the world on a least-cost pathway to limiting global warming to 2°C and 1.5°C respectively.
The significance of this fact — asserted by the United Nations — is that, for the foreseeable future, 53.5 BILLION tons of CO2 is the minimum standard (since emissions show no sign of declining) by which we are to measure the significance of claims and promises of emissions cuts.

**Fact 2. Manmade greenhouse gas emissions are growing.**

From the same UN report and section, manmade greenhouse emissions are increasing with no end in sight (See underscored text, below).

2. **Global greenhouse gas emissions show no signs of peaking.** Global CO₂ emissions from energy and industry increased in 2017, following a three-year period of stabilization. Total annual greenhouse gases emissions, including from land-use change, reached a record high of 53.5 GtCO₂e in 2017, an increase of 0.7 GtCO₂e compared with 2016. In contrast, global GHG emissions in 2030 need to be approximately 25 percent and 55 percent lower than in 2017 to put the world on a least-cost pathway to limiting global warming to 2°C and 1.5°C respectively.

To further underscore the reality of the facts presented in the UN report consider the following.

Despite decades of climate alarmism, the world is burning more coal, oil and gas than ever before. Even while U.S. utilities plan to shut down a handful of coal plants here and there over the coming decades, the New York Times reported on July 1, 2017 that:³

Over all, 1,600 coal plants are planned or under construction in 62 countries, according to Urgewald's tally, which uses data from the Global Coal Plant Tracker portal. The new plants would expand the world's coal-fired power capacity by 43 percent.

Pictured below, for example, is the Thar power plant in the Sindh province of Pakistan. The plant sits atop 175 billion tons of coal—one of the largest deposits in the world equal to about 20 years of global coal production. Pakistan plans for the site to produce 200,000 MW of electricity over the next 100 years.
China has actually reversed its announced policy of limiting coal plant construction.

Even though China is by far the world’s leading coal burner, its power sector has proposed DOUBLING its coal burning capacity by 2030, which would mean building a new coal plant every two weeks until 2030.⁵
Consider this comparison between coal plant construction in China versus planned coal plant closures is the US. In July 2016, the U.S. Energy Information Administration reported that between 2019 and 2025 a total of 17 gigawatts (GW) of US coal plants are expected to be shuttered.6
Days later, a study reported China is adding another 45 GW worth of coal plants in 2019 alone.  

So in 2019 alone, China is opening 264% of the coal plants the total coal plants the US will be shuttering by 2025.

Not only is all this coal generation coming online, but oil and gas companies plan to produce all of their reserves. Royal Dutch Shell announced in the wake of the Paris Climate Accords that:  

For all its arm-waving about no longer financing fossil fuel development around the world, the World Bank is financing four times as much in coal, oil and gas projects as in wind and solar projects — $21 billion for fossil fuels vs. $7 billion for renewables. This is “undermining the Paris Climate Agreement,” according to the German climate NGO, Urgewald.
While many say emissions of manmade greenhouse gas emissions should be cut, no one is actually cutting them.

As of July 2018, 197 of the world’s 210 nations had ratified the 2015 Paris Climate Accords calling for global reductions in CO2 emissions. But consider the March 2019 UN report, “Global Energy and CO2 Status Report.”

The report shows that despite that 94% of the world’s nations have signed onto the Paris Climate Accords, emissions are not being cut. Consider the chart, below, from the UN report.
Not only are emissions not declining, they are rising dramatically — in line with the UN statement from its “Emissions Gap Report 2018:”

Global greenhouse gas emissions show no signs of peaking.

Further, any claims of emissions cuts are most likely false as pointed out in an August 2018 report from the Climateworks Foundation, entitled “The Carbon Loophole: Quantifying the Embodied Carbon in Traded Products.”

THE CARBON LOOPHOLE IN CLIMATE POLICY
Quantifying the Embodied Carbon in Traded Products
Wealthy and formerly heavily industrial nations — e.g., the U.S. and Western Europe — have shifted much of their industrial manufacturing to China, India, Mexico and other countries where labor is cheaper and environmental and workplace regulation is less expensive.

While this outsourcing of energy-intensive industrial manufacturing to other countries necessarily reduces the direct greenhouse gas emissions of the wealthy nations, it has not reduced any actual emissions on a global basis. As “The Carbon Loophole” reports, on a global basis, about 25% of global emissions have simply been shifted between countries.

As an example of this so-called “carbon loophole,” consider the case of the United Kingdom.

The World Bank chart, below, purports to show that per capita carbon dioxide emissions in the UK have declined significantly since 1960.
However, according to the “Carbon Loophole” report, imports to the UK now represent about 5.7 metrics tons of greenhouse gases on a per capita basis.
Adding the current World Bank per capita carbon footprint of the UK (~6.5 tons) to the carbon footprint of UK imports (~5.7 tons), the actual per capita carbon footprint of the UK is 12.1 tons — which is about 10% greater than the 1960 per capita carbon footprint of the UK of 11 tons. And this increase in per capita footprint remains despite all the improvements in technology and efficiency made over the past 60 years.

The undeniable reality is that manmade greenhouse gas emissions are at a record — 53.5 BILLION tons annually — and are rising with no end in sight.

For anyone who is skeptical of the “no end in sight’ conclusion, consider that global population, now at about 7.7 BILLION is expected to rise dramatically — to 9.8 BILLION by 2050 and 11.2 BILLION by 2100.12

These coming BILLIONS of people will require food, housing, transportation and other goods and services that do and will continue to require the burning of coal, oil and natural gas and their attendant emissions of carbon dioxide.

**Fact 3. US emissions are relatively insignificant and irrelevant to climate, according to UN models**

There are two realities that support Fact 3.

*Reality 1: Even if the US emissions were ZERO, the rest of the world’s emissions are way above the Kyoto Protocol’s goal (i.e., 46.5 BILLION tons vs 35 BILLION tons).*
Of the 53.5 BILLION tons of carbon dioxide-equivalents (CO2) emitted in 2017, the U.S. share was 13.1%. or about 7 BILLION tons, according to the UN.

Imagine that the U.S. went entirely dark and emitted no more manmade CO2.

The rest of the world, which shows no signs of emitting less CO2, would still emit at least 46.5 BILLION tons of CO2 every year — and that 46.5 BILLION tons is a figure that is only increasing.

Now recall that the goal of the 1997 Kyoto Protocol was to reduce and stabilize CO2 emissions to 1990 levels of around 35 BILLION tons of CO2.

**Reality 2: Even if the US stopped emitting today, the difference in atmospheric greenhouse gas concentrations and global temperature would not be meaningfully different from the US not cutting emissions.**

If the U.S. stopped emitting CO2 immediately, the atmospheric CO2 level would be approximately 29 parts per million (ppm) less by the year 2100. Today’s atmospheric CO2 level is at about 412 ppm and is increasing at a rate of a little more than 2 ppm per year. So if emissions don’t decrease — and the UN doesn’t expect them to — we can expect that atmospheric CO2 will be at about 412 ppm + (2 ppm/year x 81 years) or 574 ppm by the year 2100. So if the US shut down immediately, atmospheric CO2 would be reduced to 574 ppm minus 29 ppm = 545 ppm. Based on IPCC modeling, the difference in mean global temperature produced by 574 ppm vs. 545 ppm is not discernibly different.

So if US emissions are relatively insignificant and irrelevant to climate — and they are — it goes without saying that registrant emissions cuts are even more insignificant and irrelevant.

**III. Registrants are making false and misleading claims about climate.**

The Commission’s 2010 Guidance was intended to guide registrants on climate-related disclosures as they related to various potential risks to their businesses. But registrants have taken the climate issue way beyond risks to business; they now use claims about climate to tout their actions to investors. Below are several examples of false/misleading statements made by registrants on climate.

**A. Example — Apple, Inc.**

Consider for example, the statements of the Apple, Inc. (“Apple”) as made in its 2019 “Environmental Responsibility Report.”
As below, Apple states in its report that it is “significantly reducing emissions to address climate change” (emphasis added).

2018 Highlights

- **Climate change**: 100% of our global facilities are powered by 100% renewable electricity
- **70% decrease in average product energy use in 10 years**
- **35% reduction in overall carbon footprint compared to 2016**

But what does this really mean? Apple subsequently discloses that its so-called carbon footprint (i.e., emissions of greenhouse gases) is about 25 million tons of CO2.
Based on the UN’s Emissions Gap Report 2018” reporting total manmade emissions of 53.5 billion tons of CO2, Apple’s 2018 CO2 emissions were about .047 percent (0.047%) of global emissions (i.e., 25 million tons divided by 53.5 billion tons).

So Apple’s CO2 emissions are less than five-hundredths of a percent of the total global emissions that contribute to atmospheric CO2 levels.

Keeping in mind that Apple claims it is “significantly reducing emissions to address climate change, Apple discloses that its emissions declined 4.8 million tons, about .009 percent (0.009%) of global emissions.

In fiscal year 2018, we reduced our comprehensive carbon footprint for the third year in a row—down 35 percent compared to 2015. A major contributor to the decrease was Apple’s Supplier Clean Energy Program, which lowered our carbon footprint by nearly 3.6 million metric tons compared to last year. We also made several product design changes that reduced our carbon footprint, like sourcing aluminum made with hydroelectricity and recycled content, improving product energy efficiency, and redesigning integrated circuits to use less silicon. Together, these product design changes resulted in 4.8 million fewer metric tons of carbon emissions compared to last year.

In absence of any other information, Apple’s claimed reduction of 4.8 million tons of CO2 appears to be a significant cut in emissions. However, in the context of global CO2 emissions it
is obviously insignificant and meaningless. Apple’s total carbon footprint of 25 million tons is similarly insignificant and meaningless.

The statement, then, that Apple is “significantly reducing emissions to address climate change” is materially false and/or misleading. Apple’s carbon footprint and its emissions cuts:

- Are insignificant in the context of atmospheric CO2 emissions; and
- Fail to “address” climate change in any meaningful way.

Any reader who makes an investment decision based on Apple’s climate statements as currently formulated is being misled.

Apple’s climate statements might possibly be repaired and be made less misleading by placing them in context of the reality of total global emissions. This would give investors essential context by which to evaluate the statements. But as is, they violate both disclosure and anti-fraud provisions of the securities laws.

B. Example — ExxonMobil Corporation

Let’s consider ExxonMobil’s “2019 Energy and Carbon Summary” report.15

The report features an introductory letter from the ExxonMobil CEO Darren Woods.
Let’s consider some of the letter’s content. Here’s the opening section:

There are few challenges more important than meeting the world’s growing demand for energy while reducing environmental impacts and the risks of climate change.

ExxonMobil is committed to doing our part to help society meet this dual challenge.

Woods claims that ExxonMobil is “doing our part” to reduce the risks of climate change. We’ll have to assume that he is limiting “doing our part” to the notion of manmade climate change as supposedly caused by manmade greenhouse gas emissions. He can’t mean stopping all climate change because the global climate changes naturally and there is nothing that humanity, let alone ExxonMobil, can do about that. So let’s continue explore whether ExxonMobil is doing “its part” to reduce the risks of manmade climate change as per Woods’ letter.

The next paragraph of interest reads:
Woods claims ExxonMobil “plays an essential role in addressing the risks of climate change.” Is this assertion true?

Assuming that Woods is referring to manmade climate change and further assuming that manmade emissions of greenhouse gases are causing climate change let’s consider some facts — key facts not mentioned or even alluded to by Woods.

As mentioned previously, the UN recently estimated manmade global greenhouse gas emissions in 2017 to have been 53.5 BILLION tons of CO2-equivalents. That seems like an awful lot of manmade greenhouse gas emissions and Woods claims ExxonMobil plays an “essential role” in reducing the attendant risk. Is that true? Before we get to whether ExxonMobil is playing an “essential role” in reducing the risks of manmade emissions, let’s consider the emissions related to ExxonMobil’s business.

According to ExxonMobil’s “2018 Summary Annual Report”, ExxonMobil produced 3,833,000 barrels of oil per day in 2018. Multiply that figure by 365 and ExxonMobil produced about 1.4 billion barrels of oil in 2018. When burned, a barrel of oil emits 0.42 tons of carbon dioxide. So in 2018, ExxonMobil sold oil that when burned produced 587,598,900 tons of CO2 (1.4 billion barrels x 0.42 tons of CO2/barrel).

So how significant is this approximately 588 MILLION tons to global climate change? Well, the math is pretty simple. Dividing 588 MILLION tons of ExxonMobil emissions by 53.5 BILLION tons of annual manmade CO2 emissions, we find that ExxonMobil’s production is responsible for emitting about 1.1% of the manmade CO2 emitted annually.

So if there is a climate change problem caused by manmade CO2 emissions, ExxonMobil is only responsible for about 1 percent of it. If ExxonMobil magically stopped operating, about 99 percent of the supposed problem would still remain.
Woods maintains that ExxonMobil “plays an essential role in addressing the risks of climate change.” Woods specifically cites commitments to reduce emissions from its methane and Canadian oil sands operations. Although these planned cuts are not specified, we can get an idea of their magnitude from previous operation emissions cuts.

Here’s the chart ExxonMobil presents of its emissions cuts from operations.

So ExxonMobil claims to have reduced its emissions from operations by 400 million tons since 2000 — the is, emissions from operations have been reduced on average of about 22.2 MILLION tons per year (i.e., 400 MILLION tons divide by 18 years).

While Woods pats ExxonMobil on the back for reducing operational emissions by 22.2 MILLION tons per year, keep in mind that ExxonMobil sold oil worth 588 MILLION tons of emissions last year... and similar albeit slight lesser amounts in earlier years. Anyway you look at it, though, claims about ExxonMobil’s operational emissions cuts are trivial and simply ridiculous. To unsophisticated readers, they are misleading.

But that is not likely the end of the deception over operational emissions cuts.

Consider the “flare reduction” portion of the operational. That methane not flared off is instead captured to be sold as product. ExxonMobil may not be wasting the methane, but someone else is ultimately burning it as fuel... meaning greenhouse gas emissions.

Next, consider the “carbon capture and storage” claim. To the extent that CO2 emissions are captured and stored, this is through the process of enhanced oil recovery (EOR). This is a total sham as far as CO2 storage goes. While CO2 may be physically stored through EOR, the CO2
emissions from the oil produced via EOR exceed the amount of CO2 stored.\textsuperscript{17} So EOR actually results in a net increase in CO2 emissions.

But however you slice it, ExxonMobil’s operation emissions cuts — even if real — are insignificant in the context of all the oil and gas that ExxonMobil produces.

But keep in mind that Woods maintains that ExxonMobil is playing an “essential role” in reducing the risks of manmade emissions. Well go ahead... divide 22 MILLION by 53.5 BILLION and see what you come up with... that’s right... 22 MILLION is 0.04\% of 53.5 BILLION. That’s ExxonMobil’s “essential role”? Reducing global emissions by 0.04\%? That is absurd.

C. Xcel

Exelon has published a report entitled, “Building a Carbon-free Future.”\textsuperscript{18}

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Xcel makes three false and/or misleading assertions in its one-page summary of the report’s scientific basis.\textsuperscript{19}
First, Xcel’s “carbon goals” are not “designed to minimize the long-term risks associated with climate change.” Xcel emits about 50 million tons of CO2 per year — i.e., less than 0.09% of global manmade CO2 emissions. Xcel could emit zero carbon dioxide, and it would make no difference to global climate.

Second, Xcel implies that the 2 degree Celsius (2C) goal of the Paris climate agreement and the 1.5 (1.5C) degree Celsius goal of a subsequent IPCC report are science-based. This is false. There is, in fact, no scientific for the 2C or 1.5C goal, a fact first revealed in the 2009 Climategate e-mails.\(^{20}\)
Third, Xcel’s statement that its “carbon goals align with emissions reduction scenarios to limit warming to 2C” is misleading for the reasons described above. Xcel’s emissions are trivial compared to the total global emissions (i.e., 53.5 BILLION tons) and the 2C goal is not at all based in science.

D. Exelon

Some registrants just make wild statements. On its web site, for example, Exelon boasts:

You might think a web site that proclaims “WE NEED THE EARTH. TODAY, IT NEEDS US” might be that of an environmental activist group. Yet Exelon is an electric utility.
That statement is part of Exelon’s campaign to tout emissions cuts via the closure of coal plants:21

**WHY EXELON DIVESTED FROM COAL: THE CASE FOR CLEAN ENERGY**

Business as usual won’t suffice for energy companies. The time to invest in a cleaner energy future is now.

Toward this coal-free end Exelon explains that:

As part of **Exelon’s 2020 commitment** to reduce greenhouse gas emissions by more than 15 million metric tons per year, we chose to retire and sell all of our coal-fired generation interests in the last decade. In February 2017, Exelon sold its 26-megawatt interest in Utah’s Sunnyside power plant, our final coal-fired asset. Today, we continue to expand our utilities’ energy-efficiency programs, as well as our nuclear, wind, solar and hydro-generating capacity.

and that:

[Image: Chart showing Exelon as the lowest CO₂ emitter among top 20 privately owned U.S. power producers]

These claims seem impressive — but only in a factual vacuum. They are misleading amid the reality of the nature of climate change, energy production and global CO₂ emissions.

Global CO₂ emissions are at 53.5 BILLION tons. Exelon’s goal of reducing its CO₂ emissions by 15 MILLION tons per year is miniscule and irrelevant in the context of global emissions. Exelon’s retirement of its coal plants is also irrelevant. While Exelon shuts down a coal plant or two, China alone aims to build 500 new coal plants by 2030, as previously mentioned. Exelon states that its
'clean energy solutions are working.” What does that mean? Exelon’s emissions may be decreasing, but global emissions are not. So precisely how are Exelon’s solutions “working”?

IV. The Commission should take action to prevent registrants from making false and/or misleading statements related to climate.

The above-mentioned examples and many other registrant statements concerning climate are false and/or misleading because they lack necessary context. Statements boasting about cutting even MILLIONS of tons of CO2 emissions in a world where 53.5 BILLION tons are being emitted every year is false and/or misleading. Registrant statements about capturing and storing carbon or shutting down coal plants are commonly exaggerated way out of all proportion.

Such statements mislead investors by giving them the false impression that the emissions are cuts are at all significant or meaningful. Regardless of one’s views on climate science, simple math shows that no registrant can affect climate in any discernible manner. No single registrant is “saving” the planet. All U.S. registrants taken together can’t “save” the planet by even by eliminating all their emissions. The math is simple. Claims to the contrary are false and/or misleading.

It is a fundamental principle of the securities laws that if a registrant chooses to speak, it must do so truthfully. The duty to be honest is basic. Partial disclosure that is materially misleading, especially if an investor acts on it, is fraud. In the case of climate, the omission of context — e.g., that is the actual insignificance of touted emissions cuts — is partial disclosure amounting to a fraud.

The Commission should issue new climate guidance to registrants instructing them that, if they choose to talk about climate, they must do so honestly and with full disclosure with respect to the significance of their actions. If a registrant wants to report that it has cut its emissions by 25 MILLION tons, it should also be required to report that, in the context of a world where manmade emissions amount to 53.5 BILLION tons, the 25 MILLION tons of emissions cuts amounts to 0.047% of global emissions.

V. The Division of Corporation Finance has issued no-action letters consistent with this petition

The Division of Corporation Finance recently issued two no-action letters consistent with this petition.

At the end of 2018, I submitted nearly identical shareholder proposals to Duke Energy and to Exelon requesting that the companies report to shareholders on the actual costs and benefits of their much-touted environment-related activities. Both companies tout the closure of coal-fired power plants as means of reducing their CO2 emissions. In both shareholder proposals, I
spotlighted the insignificance and misleading nature of the touting of their claimed emissions cuts.

Both companies submitted requests to the Division of Corporation Finance asking that the Commission take no action if my proposals were excluded. In their requests, both companies claimed as a reason for granting their no-action letters that they already had implemented my proposal by discussing climate in the manner they did and in other documents.

I responded by pointing out that in no document or statement did the companies place their emissions cuts and coal plant closures in appropriate perspective. As such, the companies were misleading investors. The companies had also tried to mislead Division of Corporate Finance staff by falsely claiming they were making disclosures that they were not actually making.

The Division of Corporate Finance subsequently rejected both Duke Energy’s and Exelon’s no-action requests by stating:22

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that the Company’s public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Summary

The two pillars of the federal securities laws and regulations are the full disclosure and anti-fraud provisions. Registrants now routinely make false and/or misleading statements about their own actions with respect to global climate change. The Commission should issue guidance so that registrants stop making false and/or misleading climate-related statements and disclosures.

Respectfully submitted,

Steve Milloy, MHS, JD, LLM
Director

1 75 Federal Register 6290-6297 (February 10, 2010).
2 https://www.unenvironment.org/resources/emissions-gap-report-2018