The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Re: RIN 3235–AM87, The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chair Gensler,

I am writing on behalf of Liberty Energy Inc. (NYSE: LBRT) and its employees in response to your request for comment on the SEC's new proposed rule on climate-related disclosures. Liberty is a leading North American oilfield services firm that offers cutting-edge completion services and technologies to onshore oil and natural gas exploration and production companies. Liberty was founded in 2011 with a relentless focus on developing and delivering next-generation technology for the sustainable development of unconventional energy resources in partnership with our customers.

All the Liberty family, from our field crews to our board of directors, forms a committed and engaged team. We strive to enhance our company, families, communities, and the world. As a company we have invested in our people and in technology to help our customers in producing efficient and clean oil and gas resources.

Our industry, domestic oil and gas production, is uniquely affected by the proposed rule. But the implications of divestment from domestic oil and gas reach far beyond our companies to impact the lives of consumers in the U.S. and the world. We submit these comments to address the legal and policy issues surrounding the proposed rule, to discuss ways in which the proposed rule will disserve the public interest, and to explain that the rule is based on erroneous assumptions about climate change impacts.

There are two salient political trends that bear on U.S. energy and environmental policy. The first is the obvious: like all other nations, we require affordable and reliable sources of energy to function. Simultaneously, there is a growing fear of an impending "climate catastrophe" and a belief that the oil and gas industry soon will be—and indeed should be—gone and replaced with an idealized vision of renewable energy. Legislative consensus to resolve climate change issues has been elusive for decades because the issues are so momentous, and climate idealists have sought to achieve their goals indirectly.

Against this backdrop, it is plain that the SEC's proposed rule is part of an attempt to establish unpopular climate policies indirectly under the veil of protecting against financial risk, while ignoring the hard compromise necessary to enact real climate policy. On its surface, the proposed rule seems to merely protect investors from financial risks. But the likely consequences are much deeper. The true effect of requiring the disclosure of greenhouse gas (GHG) emissions, "physical risks," and speculative "transition risks" is to manipulate the capital market system to achieve

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energy and climate policy goals. Prominent fund managers have long called for this information so that they could use it to leverage the financial industry to force a transition away from oil and gas. Now the SEC appears poised to impose a government mandate requiring companies to disclose the information that fund managers have long sought. Together with the SEC's other ESG rules currently under consideration, a new financial framework will in myriad ways discourage fossil fuel investments.[1]

Even if the SEC were sympathetic to such a politically motivated agenda, this sort of climate regulation is not within the SEC's primary jurisdiction. By operating outside of its statutorily delegated authority—and on a topic of vast significance to the economy and quality of life—the proposed rule is not a permissible interpretation of the Securities Exchange Act under the Supreme Court's major questions doctrine.

Instead, the SEC is the agency tasked with regulating portions of the financial industry. The Supreme Court has held that even in its proper domain, the SEC's power is limited to requiring the disclosure of information that is material. Even if the proposed rule is an effort to shield investors from the financial risks posed by climate change, it still must meet this materiality standard. But the risks posed by climate change have been greatly overstated, and the core premises of the proposed rule—i.e., that extreme weather damage is increasing, and that fossil fuel demand is shrinking—are completely contradicted by the evidence, undermining the proposed rule's ability to meet this materiality standard.

Finally, the proposed rule's myopic focus on GHG emissions ignores that affordable energy resources are in the public interest. The investment decisions driven by this rule will threaten the availability of capital for the domestic oil and gas industry, thus increasing energy costs for consumers. Affordable natural gas has been critical to reducing energy poverty, criteria pollutants, and even global GHG emissions. The proposed rule is arbitrary and capricious because it fails to consider how essential affordable energy is to the public interest, and instead focuses only on illusory risks.

Liberty takes great pride in our work. We strive to improve our community and the environment in everything we do. The climate-related risk disclosures called for in the proposed rule work against this public interest and violate the SEC's legal mandate.

The SEC's attempt to regulate to prevent climate change violates the major questions doctrine.

SEC Commissioner Hester Pierce has aptly described the reality of the situation: "Let us be honest about what this proposal is really trying to do. Although styled as a disclosure rule, the goal of this proposal . . . is to direct capital to favored businesses and to advance favored political and

[1] *See Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, SEC (May 25, 2022), https://www.sec.gov/rules/proposed/2022/ia-6034.pdf; *Investment Company Names*, SEC (May 25, 2022), https://www.sec.gov/rules/proposed/2022/ic-34593.pdf

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social goals."[2] The proposed rule itself almost admits as much, listing as supporters dozens of groups who have admitted that they want these disclosures to support "the goal of net zero GHG emissions by 2050 or sooner,"[3] to "achieve the goals of the Paris Agreement,"[4] and to "transform the global financial system in order to finance the investment in a net-zero economy."[5]

While these may seem to be noble goals, the SEC lacks the statutory authority to issue its proposed rule mandating vast climate disclosures for the simple reason that another agency—the Environmental Protection Agency—has already been tasked by Congress with regulating environmental matters both through direct regulation and by requiring extensive disclosures on that topic. The Supreme Court has recognized that the EPA is specifically given the task of environmental regulation regarding climate: "Congress delegated to the EPA the decision whether and how to regulate carbon-dioxide emissions . . . ."[6]

Indeed, the EPA already requires GHG emission figures from all facilities that emit more than 25,000 metric tons of CO2-equivalent per year as well as from all facilities that supply certain products that would result in over 25,000 metric tons of CO2-equivalent if those products were released. All this information is publicly available through the EPA's website, as the proposed rule acknowledges.[7] As the EPA's own website explains, this GHG Reporting program covers more than 8,000 facilities representing 85 to 90% of all U.S. GHG emissions.[8]

For nearly 50 years, the SEC agreed that GHG disclosures were EPA's job: "disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific congressional mandate or unless, under the particular facts and circumstances, such matters are material."[9] The SEC's previous reasoning was correct and reflects "common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency."[10]

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[2] SEC Comm'r Hester M. Peirce, *We Are Not the Securities and Environment Commission—At Least Not Yet*, Mar. 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321; see also Rupert Darwall, *The SEC Tries Its Hand at Climate Policy*, THE HILL, Mar. 30, 2022, https://thehill.com/opinion/energy-environment/600203-the-sec-tries-its-hand-at-climate-policy/.

[3] The Net Zero Asset Managers Initiative, https://www.netzeroassetmanagers.org/ (last accessed May 4, 2022).

[4] *About*, Climate Action 100+, https://www.climateaction100.org/about/ (last accessed May 4, 2022).

[5] FSB, *FSB Roadmap for Addressing Climate-Related Financial Risks* 3 (July 7, 2021), https://www.fsb.org/2021/07/fsb-roadmap-for-addressing-climate-related-financial-risks.

[6] Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 426 (2011).

[7] 87 Fed. Reg. at 21,414 & nn.736–38.

[8] *Greenhouse Gas Reporting Program and the U.S. Inventory of Greenhouse Gas Emissions and Sinks,* EPA (Oct. 6, 2021), https://www.epa.gov/ghgreporting/greenhouse-gas-reporting-program-and-us-inventory-greenhouse-gas-emissions-and-sinks.

[9] *Business and Financial Disclosure Required by Regulation S-K*, 81 Fed. Reg. 23,916, 23,970 (Apr. 22, 2016); see Environmental and Social Disclosure, Notice of Commission Conclusions and Rulemaking Proposals, 40 Fed. Reg. 51,656, 51,657 (Nov. 6, 1975).

[10] FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000).

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This commonsense reasoning is captured in the Supreme Court's major questions doctrine, which requires Congress to "speak[] clearly" when it delegates powers of vast "significance" to an agency.[11] The Court has explained that while there are some subjects "of less interest, in which a general provision may be made, and power given to [others] to fill up the details," other, more "important subjects" "must be entirely regulated by the legislature itself."[12] How to precisely distinguish between important and unimportant subjects is a matter of some discretion, but the Court has consistently held that the major questions doctrine applies to rules that involve "vast economic" significance.[13] For example, in *King v. Burwell*, the Supreme Court viewed "billions of dollars in spending each year and affecting the price of health insurance for millions of people" as enough economic concern to defeat deference to the agency.[14] Separate from some threshold monetary figure, attempts by an agency to regulate "a significant portion of the American economy" would also qualify.[15]

And make no mistake, the SEC's proposed environmental regulations are of vast economic significance. The proposed rule's own compliance-cost estimates—which the rule concedes likely underestimate true costs—are approximately $15.3 billion, with over $3.5 billion of that onus in the first year alone.[16] While we are still in the early stages of mapping out a strategy to comply with the ominous requirements of the proposed rules, initial indications suggest compliance costs could run much higher. The proposed rule represents the most expansive regulatory framework ever adopted by the SEC, affecting not just listed companies but every single link in those companies' supply and distribution chains, right down to the everyday customer. The proposed rule's likely impacts on domestic energy investment and production would be far-reaching. It would not impose burdens on just "a significant *portion* of the American economy" but on nearly *all* of it.

Nowhere did Congress "clearly" provide the SEC with the power to mandate vast climate disclosures. Instead, in justifying the proposed rule the SEC invokes only its generic powers to require disclosures in "the public interest."[17] The major questions doctrine requires that such broad and ambiguous language be construed against the SEC.

The SEC's power is limited to disclosing material information, and given the overstated impact of climate change, most of the disclosures called for are not material.

Even if these disclosures were within the SEC's domain, the proposed rule still exceeds the Commission's statutory authority because the SEC is limited to requiring disclosure of "material"

[11] Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2489 (2021).

[12] Wayman v. Southard, 23 U.S. 1, 6 (1825).

[13] Util. Air Reg. Grp. v. EPA, 573 U.S. 302, 324 (2014).

[14] 576 U.S. 473, 485–86 (2015).

[15] Util. Air Reg. Grp, 573 U.S. at 324 (quoting Brown & Williamson Tobacco Corp., 529 U.S. at 159).

[16] See 87 Fed. Reg. at 21,439 (estimating first-year costs of $640,000 for each non-SRC, then $530,000 for each subsequent year, totaling $2,760,000 for each non-SRC over the first five years.)

[17] 87 Fed. Reg. at 21,335.

950 17th Street, Suite 2400 Denver, CO 80202 303-515-2800

information. While the proposed rule does much to try to play up the risks that climate change poses to financial performance, the fact is that few if any climate-related risks rise to the level of "materiality" such that there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[18]

Although the Securities Act and Securities Exchange Act do not expressly use the word "material," the Supreme Court has recognized that the "public interest" is not furthered by requiring companies "simply to bury the shareholders in an avalanche of trivial information," which "is hardly conducive to informed decision making" and thus would "accomplish more harm than good."[19] Similarly, in *Mills v. Electric Auto-Lite Co.*, the Court held that a misstatement in disclosures is actionable only when "material" because imposing liability beyond that limit "would not further the interests protected by" the statutes.[20] Under the same logic, by limiting the SEC's disclosure power to those types of disclosures that further the "public interest," Congress was necessarily limiting the SEC to requiring only material information.

And climate-related risks are largely not material risks—and certainly are not the type that can be mandated from *every* listed company. The proposed rule divides climate-related risks into two categories: "physical risks," or the risks associated with increased extreme weather; and "transition risks," or the risks posed by policy changes driving companies away from fossil fuels. As the proposed rule itself admits, a registrant's ability to identify these risks is, at best, sheer guesswork because they will rely on subjective modeling about events with time horizons over decades away.[21] What little information we do have about physical and transition risks suggests that nearly the opposite of the proposed rule's claims is true: the risks associated with extreme weather are decreasing, and the world is increasing its demand for natural gas and oil.

Changes in extreme weather events do not pose a material risk to U.S. companies

As detailed in our 2020 ESG report (attached), the story of the 20th century is the story of the triumph of energy.[22] The arrival of fossil fuels transformed humanity, lifting billions out of poverty and more than doubling human life expectancy.[23] Fossil fuels today support billions of people in lifestyles that were simply unimaginable only a few generations ago. Planes, trains, and automobiles changed the game of human mobility. Modern medicine, communications, the internet, and air conditioning have changed the human condition beyond anything our ancestors would recognize.

[18] TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976).

[19] *Id.*

[20] 396 U.S. 375, 384 (1970).

[21] 87 Fed. Reg. at 21,445, 21,427.

[22] *2020 ESG Report: Bettering Human Lives*, Liberty Oilfield Services (2020) at 16, https://www.libertyfrac.com/wp-content/uploads/2021/06/Liberty-ESG-2020-Bettering-Human-Lives.pdf.

[23] Max Roser, et al., *Life Expectancy*, Our World In Data (Oct. 2019), https://ourworldindata.org/life-expectancy.

950 17th Street, Suite 2400 Denver, CO 80202 303-515-2800

This unprecedented growth was accomplished largely on the back of coal, oil, and natural gas—with the latter two increasingly displacing coal in the United States in recent decades.[24] The shale revolution has caused American natural gas production to climb, pushing global natural gas prices down. The biggest impacts of this change have been seen in the electricity sector, where natural gas has vaulted to the top, supplying nearly 40% of U.S. electricity.[25] Coal has fallen from over 50% of U.S. electricity supply just 15 years ago, to less than 25% today. This reduction in coal has meant both cleaner air (lower particulate matter, sulfur dioxide, mercury, etc.) in the U.S., and a decline in U.S. GHG emissions on a per capita basis to its lowest level in over 50 years.[26] Well over half of the steep U.S. drop in GHG emissions over the last 15 years is attributable to natural gas displacing coal.[27]

The increase in the use of fossil fuels has led to a global shift in climate. It is estimated that atmospheric CO2 concentration was just below 0.03% (280 ppm) before the industrial revolution and the large-scale combustion of hydrocarbons has driven a steady climb in atmospheric CO2 concentration to slightly above 0.04% (415 ppm) in 2019.[28] While the details are complicated, estimates that doubling pre-industrial times atmospheric CO2 concentration to 560 ppm (likely by late this century) would result in a 1.3–1.4 degree Celsius average warming of the planet absent feedback effects. There remains significant scientific uncertainty around feedback effects, which could drive these numbers higher or lower: changes in temperature can lead to secondary effects like increasing atmospheric water vapor or increased surface albedo that further drive temperature changes up or down.

But global temperature rise is—by itself—not the concern. In fact, millions of lives have been saved by reducing cold-related deaths. While both extreme hot and extreme cold can be fatal, extreme cold is far more deadly. A 2015 meta-study in *Lancet* found that 17 times more deaths are attributable to low temperatures than to high.[29] This is why a 2021 study found that, while heat-related deaths have increased somewhat over the last two decades, they were more than offset by

[24] *Monthly Energy Review*, U.S. Energy Information Administration (Apr. 2021), https://www.eia.gov/energyexplained/us-energy-facts/.

[25] *U.S. Total Energy Statistics,* U.S. Energy Information Administration (Apr. 2021), https://www.eia.gov/energyexplained/us-energy-facts/data-and-statistics.php.

[26] Hannah Ritchie & Max Roser, *United States: CO2 Country Profile*, Our World in Data (2020), https://ourworldindata.org/co2/country/united-states.

[27] *The Role of Gas in Today's Energy Transitions*, International Energy Agency (2019), https://www.iea.org/reports/the-role-of-gas-in-todays-energy-transitions.

[28] *See* Timothy Bralower & David Bice, *Carbon Dioxide Through Time*, College of Earth and Mineral Science, The Pennsylvania State University (2022), https://www.e-education.psu.edu/earth103/node/1018.

[29] *See* Antonio Gasparini, et al., *Mortality Risk Attributable to High and Low Ambient Temperature: A Multicountry Observational Study*, 386 LANCET 369 (2015), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)62114-0/fulltext.

reductions in cold-related deaths, with the net effect that climate related mortality has decreased by about 166,000 deaths per year. [30]

Rather, it is second-order effects like a potential increase in extreme weather events that are most worrying. And it is these risks that the SEC points to. The proposed rule asserts that "many" physical risks, like "increased severity of extreme weather events, such as cyclones, hurricanes, or floods" associated with climate change "have already impacted"[31] companies and that there is a "consensus" that in the long-term climate change "poses significant global risk."[32]

But this simply is not true. Extreme weather features prominently in the news—perhaps because of the frightening sense of awe inspired by hurricanes, tornadoes, floods and droughts—but to date we have not seen an increase in extreme weather events. Deaths from extreme weather events have been plummeting as a wealthier, more energized world has proven far more resilient than in times past.

Take hurricanes, for example. While there is large annual variability in hurricane activity, the data shows no obvious increasing trend.[33] Tornadoes are also often mentioned—but tornadoes of a greater than F3 magnitude have shown a *downward* trend over the last 70 years.[34] Flood damage as a percentage of GDP has plummeted since 1940, and while wildfires have burned millions more acres of forest in the 2010s than in the 1990s, that number represents only a small fraction of the more than 40 million acres burned nearly each year in the 1930s and 1940s.[35]

By far the most important factor regarding extreme weather is the impact that it has on human lives. There has been an over 90% decline in annual global deaths from extreme weather over the last century even while the world population has more than tripled over the same time period.[36] Wealthier societies with abundant access to affordable energy are simply far safer places to live than they were a century ago. The large majority of the remaining deaths from extreme weather are concentrated in poorer nations with high rates of energy poverty. Spreading energy

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[30] *See* Qi Zhao et al., *Global, Regional, and National Burden of Mortality Associated with Non-optimal Ambient Temperatures from 2000 to 2019: A Three-stage Modelling Study*, 5 LANCET PLANET HEALTH (2021) https://doi.org/10.1016/S2542-5196(21)00081-4.

[31] 87 Fed. Reg. at 21,350.

[32] 87 Fed. Reg. at 21,339 n.40.

[33] *See* Philip J. Klotzbach, et al., *Continental U.S. Hurricane Landfall Frequency and Associated Damage: Observations and Future Risks,* 99 BULLETIN AM. METEOROLOGICAL SOCIETY 1359 (2018).

[34] *See National Weather Service, Storm Prediction Center,* National Oceanic and Atmospheric Administration, https://www.spc.noaa.gov/wcm.

[35] *See* Frances V. Davenport, et al., *Contribution of Historical Precipitation Changes to US Flood Damage*, 118 PNAS (Jan. 11, 2021); Sean A. Parks, et al., *High-severity Fire: Evaluating its Key Drivers and Mapping Its Probability Across Western US Forests*, 13 Environmental Res. Letter. (Apr. 18, 2018).

[36] *See* Hannah Ritchie & Max Roser, *Natural Disasters*, Our World in Data (Nov. 2021), https://ourworldindata.org/natural-disasters.

950 17th Street, Suite 2400 Denver, CO 80202 303-515-2800

access to those currently in energy poverty is the key to further driving down deaths from extreme weather.

While climate change is broad and complicated, it is simply incorrect to suggest that increasing extreme weather is posing a risk to businesses. If anything, the opposite is the case. Accordingly, it makes little sense to impose a disclosure requirement based on an erroneous assumption. Financial quantification of such a dubious risk will lead to confusion, regulatory uncertainty, and litigation—not to meaningful investment information.

Fossil fuel demand is increasing, not decreasing

The proposed rule also suggests that companies must disclose pending "transition risks" or risks related to an "anticipated reduced demand for fossil fuels."[37] But this gets the fact exactly backwards: fossil fuel demand is increasing, not decreasing. As mentioned above, while U.S. GHG emissions have been declining for several years now, American oil and gas production has continued to grow. The U.S. Energy Information Administration expects U.S. fossil fuel production to reach new highs in 2023, and petroleum and natural gas production are expected to continue to increase through 2050.[38]

The continuing increase in oil and natural gas demand is largely because they are essential components in global manufacturing and food production. Oil and natural gas are core to the synthesis of fertilizers, plastics, and steel. Without synthetic nitrogen fertilizers, mainly made from natural gas through the Haber-Bosch process, current farmland could sustain only about half of the global population.[39] Nearly all plastics (99.8%), ubiquitous in modern life, are made from fossil fuels.[40] Steel cannot yet be produced in a commercially viable way without fossil fuels, steel production is currently responsible for 8% of the world's energy demand, and steel production is expected to increase by more than a third by 2050.[41] These are all good reasons to expect that regulatory pressure will not lead to a reduced demand for fossil fuels.

This is part of the reason, despite the promises of the Kyoto Protocol and the Paris Agreement, why the energy transition is proceeding at a glacial pace. Renewable energy's share of global energy bottomed out in the 1970s/1980s at around 13%.[42] Since then, it has crept up to around 14% today as the continued gradual decline in market share of traditional fuels like wood, dung, and

[37] 87 Fed. Reg. at 21,354.

[38] *EIA Expects U.S. Fossil Fuel Production to Reach New Highs in 2023*, U.S. Energy Information Administration (Jan. 21, 2022), https://www.eia.gov/todayinenergy/detail.php?id=50978.

[39] *See* Hannah Ritchie, *World Population Supported by Synthetic Fertilizers*, Our World in Data (Nov. 7, 2017), https://ourworldindata.org/how-many-people-does-synthetic-fertilizer-feed.

[40] *Fossil Fuels & Plastic,* Center for International Environmental Law (2022), https://www.ciel.org/issue/fossil-fuels-plastic/.

[41] *Iron and Steel Industrial Roadmap,* International Energy Agency (Oct. 21, 2020).

[42] Bjorn Lomborg, Welfare in the 21st Century, 156 TECHNOLOGICAL FORECASTING & SOCIAL CHANGE (July 2020).

950 17th Street, Suite 2400 Denver, CO 80202 303-515-2800

agricultural waste is being offset by the rise of solar, wind, and industrial scale biofuels.[43] Solar and wind today make up about 2-3% of global primary energy supply. There are a wide range of projections, but few show renewables representing even a third of global energy by 2050.

The recent invasion of Ukraine by Russia, and the ensuing global energy crisis, has shown how much more sensitive global markets are to energy security than to any long-term risks from a transition away from fossil fuels. Russia is one of the largest oil and gas producers—trailing only the U.S. and Saudi Arabia in oil production and only the U.S. in natural gas production. So when markets perceived the threat of the Russian supply being curtailed, oil and gas prices shot up—as did the share prices of the energy companies that supply them. If the average investor views a company's production of fossil fuels as material, it seems that recent transitions make that a material advantage and not a material risk.

The proposed rule is arbitrary and capricious because its myopic focus on greenhouse gas emissions ignores that affordable energy resources are in the public interest.

The SEC's required disclosures must be "in the public interest."[44] But contrary to the claims of the prominent fund managers calling for these disclosures, affordable energy resources like natural gas are firmly in the "public interest." It is simply not possible to discuss the environmental and social impacts of the oil and gas industry without considering the human impacts of the absence of our industry. Because the proposed rule ignores these benefits, it is arbitrary and capricious.

The fund managers who have called for these disclosures have made clear why they want them: to drive "aggressive reductions" in GHG emissions, "including by addressing Scope 3 indirect emissions throughout supply and value chains."[45] Through broad disclosure regimes, climate activists hope to open the door to public shaming and to aggressive enforcement actions by the SEC, by other agencies, by state and local officials, and to private lawsuits.[46] Further, because there is great uncertainty in determining the short and long-term risks from climate change, the proposed rule would expose issuers and investors to the greater uncertainties of climate litigation risk.

To efficiently develop affordable energy resources, energy companies need efficient access to public capital markets. If these onerous climate change regulations are enacted, some energy companies that cannot comply—or would bear increased litigation risks by complying—will be

[43] *Id.*

[44] 15 U.S.C. § 77g(a)(1)

[45] *Ceres Ambition 2030*, Ceres, https://www.ceres.org/climate/ambition2030 (last accessed May 4, 2022) (referenced as calling for the disclosures at 87 Fed. Reg. 21,338).

[46] Rupert Darwall, *Capitalism, Socialism, and ESG*, Real Clear Briefing (May 2021), https://www.realclearpolitics.com/docs/2021/rupert_darwall_capitalism_socialism_and_esg_may_2021.pdf

950 17th Street, Suite 2400 Denver, CO 80202 303-515-2800

forced to go private, increasing the cost of capital. This increased capital cost will, in turn, lead to increased cost for energy production, and ultimately increased cost for energy consumers.

These rising costs are not in the public interest. As detailed in our 2020 ESG report, affordable energy is essential to better human lives for several reasons. First, inexpensive natural gas reduces energy poverty. The most urgent challenge facing society today is that fully one-third of humanity still lacks access to basic modern energy, including over 80% of Africans and half of Indians.[47] Over two billion people still cook their daily meals and heat their homes with traditional fuels, typically wood, dung, agricultural waste, or charcoal.[48] For lack of clean fuels like natural gas or propane, two to three million people die every year from the resulting indoor air pollution. Closer to home, the shale revolution has helped keep energy prices low in the United States. In a country where most Americans live paycheck to paycheck, a surge in energy prices beyond what is already occurring today with record high gasoline and diesel prices would be devastating.[49]

Second, rising energy costs are against the public interest because they will slow the decades of progress that have been made in reducing criteria pollutants. As mentioned above, the Clean Air Act named six "criteria pollutants" that posed the greatest threat to human health: ground-level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen oxides. Technological innovations—automobile catalytic converters, scrubbers on coal plants, improvements in Diesel engines, and so on—have led to a dramatic 73% decline in these six harmful pollutants over the last 40 years.[50]

But by far the world's deadliest pollutant, particulate matter, is considerably lower in the U.S. today than in all the other OECD countries in Europe and Asia. Natural gas, when efficiently combusted, produces virtually no particulate matter. As a result, by displacing far dirtier coal electric generation with inexpensive natural gas, atmospheric particulate matter has continued to decline in the United States, likely saving thousands of lives.

Finally, raising the cost of producing natural gas is counterproductive to reducing GHG emissions. This is because natural gas combustion reduces global GHG emissions.[51] Per capita GHG emissions were flat from 1970 until the shale revolution took full effect. But as discussed above, today per capita GHG emissions have dropped 22% compared to 1970, largely driven by the rapid replacement of coal with natural gas as the U.S.'s leading source of electricity. Gas displacement of coal in the U.S. has mostly been driven by cost reduction.[52]

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[47] *See* Max Roser, *Energy Poverty and Indoor Air Pollution*, Our World in Data (July 5, 2021), https://ourworldindata.org/energy-poverty-air-pollution.

[48] *Id.*

[49] Jessica Dickler*, As Inflation Heats Up, 64% of Americans are Now Living Paycheck to Paycheck*, CNBC (Mar. 8, 2022), https://www.cnbc.com/2022/03/08/as-prices-rise-64-percent-of-americans-live-paycheck-to-paycheck.html.

[50] *Air Quality - National Summary*, EPA (June 1, 2022), https://www.epa.gov/air-trends/air-quality-national-summary.

[51] *Sources of Greenhouse Gas Emissions,* EPA (Apr. 14, 2022), https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions.

[52] *Id.*

Globally, coal is still the world's dominant source of electricity with a market share over one-third. China alone currently contributes 30% of the world's CO_2 emissions—producing nearly 13 billion tons in 2019, as much as the United States, India, Russia, and Japan combined.[53] Two-thirds of China's electricity, and the vast majority of China's CO_2, comes from coal. If the United States exported enough natural gas to China to replace Chinese coal the world could reduce total CO_2 by nearly 5 billion tons, more than the United States emitted *in total* in 2020.[54]

For a company like Liberty, the greatest public good we can do is to provide clean and efficient natural gas at the lowest possible price. But the proposed rule ignores this aspect of performance and instead draws a straight line between our scope 3 emissions and future financial performance. This is arbitrary and capricious.

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At Liberty we take seriously our commitment to the public interest. The broader social, community, governance, environmental, and human flourishing aspects of energy are topics near and dear to our hearts. These were significant drivers of why we founded Liberty in the first place. But taking care of the public interest means that we strive to learn first, define a thoughtful plan, and only then act.

The proposed rules are not thoughtful, they misrepresent the nature of climate-related risks, and they work directly contrary to the public interest. But possibly worse than that, the proposed rules appear to violate the SEC's legal mandate: stepping beyond the Commission's domain, running afoul of the major questions doctrine, and leaping past the materiality requirement for disclosures. We respectfully request that the SEC seriously reconsider its approach.

Thank you,

Christopher Wright

Chairman and CEO

Liberty Energy Inc.

[53] *The Chinese Companies Polluting the World More Than Entire Nations*, Bloomberg News (Oct. 24, 2021), https://www.bloomberg.com/graphics/2021-china-climate-change-biggest-carbon-polluters/.

[54] *In 2020, the U.S. Produced the Least CO2 Emissions from Energy in Nearly 40 Years,* U.S. Energy Information Administration (July 26, 2021), https://www.eia.gov/todayinenergy/detail.php?id=48856.

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