

June 17, 2022
Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for Public Comment on Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors (Release Nos. 33-11042; 34-94478; File No. S7-10-22)

Ms. Countryman:

Equitrans Midstream Corporation (“*ETRN*”) is one of the largest natural gas gatherers in the U.S. and holds a significant transmission footprint in the Appalachian Basin. ETRN is headquartered in Pennsylvania and has been an independent, publicly traded company since November 2018. We write today in response to the U.S. Securities and Exchange Commission’s (“*Commission*” or “*SEC*”) request for comment on any or all aspects of the rule amendments proposed by the Commission on March 21, 2022 (the “*Proposed Rules*”). We appreciate the opportunity to comment on the Proposed Rules. However, we have significant concerns about both the scope and the significant costs and burdens that the Proposed Rules may impose on us, investors, and the market more generally. Because we have broad-based concerns with the Proposed Rules, we have organized our comments based on the overarching themes and specific concerns we have identified regarding the Proposed Rules instead of the specifically enumerated questions from the Commission’s proposing release.

I. Summary

ETRN does not believe that the Proposed Rules, as drafted, would serve the needs of investors or reasonably balance the burdens imposed on companies as a result of the Proposed Rules. Federal securities law charges the Commission with a tripartite mandate: investor protection; the maintenance of orderly markets; and the facilitation of capital formation. However, the Proposed Rules significantly deviate both from this mandate and the Commission’s prior commitments to a principles-based disclosure regime.

The Proposed Rules would institute a complex and prescriptive disclosure regime over and above the multitude of disclosures that public companies are already expected to provide. Adding these disclosure requirements would exacerbate the already lengthy disclosures required of companies and make it increasingly difficult for investors to identify information that is material to their investment and voting decisions. It would also impose significant costs and burdens on companies to comply with timelines that may well be impossible to meet, while simultaneously interfering in the direction of capital flows and chilling dialogue between companies and investors. Importantly, when regulation not only fails to truly bolster companies’ risk management systems, but in fact potentially puts companies at risk through the creation of unnecessarily burdensome requirements and disclosures that could result in unforeseen risks,



the regulation also fails to protect investors who invest in those companies. As such, we respectfully submit that the Proposed Rules, as drafted, fail both investors and the companies in which they invest and urge the Commission to reframe any final rule on climate-related disclosures in light of the comments below.

II. The Proposed Rules Would Result in an Extraordinarily Burdensome Regime that Does Not Appear to Equitably Consider the Cost or Feasibility, in Both Time and Resources, of Compliance.

The Proposed Rules are significant in both length and scope. They represent a substantial new set of prescriptive requirements on companies. While the Commission is tasked with protecting investors, ETRN does not believe that the Proposed Rules would effectively facilitate that mission when assessing the costs and benefits of the Proposed Rules as drafted. Below, we discuss four overarching thematic concerns with the framework of the Proposed Rules, regarding: (1) the inconsistent treatment of materiality in the Proposed Rules; (2) the unrealistic timing requirements in the Proposed Rules; (3) the burdensome and potentially ineffective disclosure controls required by the Proposed Rules; and (4) the failure of the Proposed Rules to consider the liability associated with these disclosures.

A. The Commission Should Revise the Proposed Rules to Conform to the Long-Standing Understanding of Materiality that Guides Companies' Disclosures.

The Proposed Rules depart from the general, long-standing materiality constraint on required disclosures. While the Commission has previously mandated certain disclosures irrespective of a materiality threshold, that is the exception. The general guidepost for disclosures in federal securities law has been information that a reasonable investor would consider important in deciding how to vote or make an investment decision.¹ However, the Proposed Rules eschew a materiality standard in some areas and apply a modified version in others.

For example, the Proposed Rules would require disclosure of Scope 1 and Scope 2 emissions data and certain financial metrics without regards to materiality. As such, some companies could end up spending more to compile and verify this information than the values of the financial figures reported. The Proposed Rules also make the assumption that Scope 3 emissions data can be “material” under the federal securities law definition of materiality without explaining how that can be possible given that (1) Scope 3 emissions will most often be outside of the control of the reporting company; (2) Scope 3 emissions, to the extent they correlate at all to a company’s performance, often correlate to better performance (i.e., higher Scope 3 emissions can correlate to financial and economic growth) and thus disclosure of such emissions may unduly hinder [REDACTED] respond [REDACTED] or mask understanding of a company’s underlying prospects and performance; and (3) Scope 3 emissions are subject to data challenges, as described elsewhere in this letter. For example, ETRN’s business model reflects the transportation of customers’ natural gas between points

¹ See *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976).



and ETRN does not assume ownership or title to the natural gas itself and, generally, does not have any relevant contractual relationships with downstream receivers of the gas. Given that model, ETRN has determined that approximately 90% of its Scope 3 emissions are likely completely outside of the Company's control and/or are unrelated to the Company's financial/economic performance. ETRN also estimates that it cannot complete this level of analysis without a significant level of assumptions, estimates and judgment calls to produce Scope 3 emissions data, and will need to rely on the data of third parties who have no contractual privity to ETRN and who may not be subject to SEC reporting requirements.

This variability in what is deemed "material" will compound concerns on other aspects of the Proposed Rules where companies will be expected to make subjective determinations or rely heavily on estimates to produce required disclosures. For example, any numerical threshold associated with the Regulation S-X disclosure requirements of the Proposed Rules will interfere with companies' need to apply contextual insight to information that is complex and overwhelmingly subjective. In addition, notably, the Proposed Rules do not provide expectations on what is a "severe weather event" or "other natural condition" for purposes of assessing potential financial impacts. Therefore, companies will need to determine this in a situation where there is already a lack of consistent data, knowledge, or established expectations. ETRN has determined that it would need to determine what a "severe weather event" and "other natural condition" means for the purposes of assessing potential financial impacts. Specifically, as one of the largest U.S. natural gas producers, in complying with the Regulation S-X disclosure requirement, the Company will have to make repeated subjective and speculative determinations in this context.

Respectfully, we posit that contrary to the Commission's mandate, the Proposed Rules appear to function mainly as an attempt to regulate based on what the Commission believes *should* matter to investors and thereby redirect capital to specific categories of investments and assets that the SEC perceives as playing a preferable role in the energy transition and the mitigation of climate change. Capital allocation is not the role of the Commission, and there is no qualification on Commission's mandate to facilitate capital formation that it can direct capital formation in one direction over another based on what the Commission believes should matter to investors.

We respectfully submit that the Commission should: (1) revise the Proposed Rules to apply a materiality standard to any climate-related disclosure requirements in keeping with the time-tested definition of materiality under the federal securities law; (2) continue to allow companies and their investor-elected boards of directors to determine what is material for the purposes of their operations and financial statements, consistent with the business judgment rule; and (3) avoid prematurely and artificially requiring companies to integrate climate-related metrics into their financial statements. If the Commission does not take this approach as sufficient for the climate-related information that the reasonable investor needs in order to make investment and voting decisions, we would ask the Commission to consider revising its 2010 Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 and, consistent with the Sample Letter to Companies Regarding Climate Change Disclosures issued



a stand-alone report that is often issued at least several months after the compliance deadline for Form 10-K. This is at least in part due to the need to procure, process, and verify substantial amounts of information, which may include external data sources (particularly to the extent Scope 2 and Scope 3 emissions are included) that do not operate on deadlines specified for Form 10-K filings. The actual timelines on which most U.S. businesses currently provide any more expansive climate information should indicate to the Commission that the timeline contemplated in the Proposed Rules is unviable.

It is also important to note that many of the voluntary disclosures companies have made to date have been based on information that those companies have been able to access and verify to a reasonable quality level in order to disclose it. To the extent the Proposed Rules require additional disclosures, and they do for many companies, the Commission is assuming that companies will be able to overcome the issues they have had to date with data availability and quality in order to, not only create compliant disclosures, but create them on the same schedule and at the same time as they are already creating and verifying information for the purposes of their current annual reporting obligations. In addition to the substantial amount of hours and resources devoted to current disclosures, ETRN will likely have to double its internal and external resources, and this does not include the continuing expansion of annual regulatory reporting requirements during the same period of time (i.e., November through February) if the Proposed Rules' requirement to include such disclosures in Form 10-K is adopted. The Commission seems to understand that timing may be an issue in this regard, noting that companies may not have all of the emissions data required to be disclosed on the required timeline. Although the Commission would permit the use of a reasonable estimate for fourth quarter emissions data, by requiring such data to be updated in a subsequent disclosure if there are any material discrepancies (without providing clear guidance on what may constitute such a "material discrepancy"), and by requiring companies to update their climate-related disclosures quarterly, the Proposed Rules will ultimately land companies in a perpetual cycle of needing to restate emissions data and update and revise climate-related disclosures (increasing substantially, throughout the fiscal year, costs for reporting obligations).

The Commission has also not identified a compelling benefit to requiring disclosure on the same timeline as Form 10-K submissions. Many companies may not have a proportionately increased amount of staff or funds for external support to accomplish this review and disclosure preparation on the same timeline; this could lead to an overall lower quality of disclosure than if the climate information required by the Proposed Rules was allowed to be submitted at a later date. For all these reasons, we ask the Commission to allow disclosures pertinent to the Proposed Rules to be issued at a later date, consistent with the business realities companies' face in providing such information, such as the deadline for the quarterly filing made for the third quarter using climate-related data from the previous fiscal year. We also request the Commission allow, but not require, this information to be presented in a separate report instead of expanding on the already substantial requirements for Forms 10-K and 10-Q, as discussed in more detail below.



C. The Proposed Rules Will Require Disclosure Controls That Are Burdensome, Costly, and Potentially Ineffective—If Even Possible.

The Proposed Rules would likely require companies to develop complex and costly internal controls processes for the required disclosures. The scope of information requested is substantial and, as described in more detail in several places in this letter, will require myriad estimates, judgment calls, and other subjective decisions that companies will need to carefully assess and vet prior to disclosure. Due to the non-financial, and yet, in some regards, scientific, nature of this information, companies likely will not be able to rely solely on existing expertise and experience that their teams have developed for financial reporting. Therefore, between the possible needs for training and education of existing staff, hiring new staff to fill in gaps in expertise, re-assignment of responsibilities to create time for additional reviews on the Form 10-K reporting schedule (as well as throughout the remainder of the fiscal year given quarterly reporting), and the need to potentially engage more and different advisors for extended lengths of time to aid in the assessment and preparation of the request information, among other aspects, the costs to prepare and vet (through newly and quickly designed and established internal controls) the required information is a substantial new burden on companies. In essence, the Commission is requiring companies to expend significant resources to build up a regime with nearly the same degree of sophistication as exists in the current financial reporting requirements, but over a span of months instead of the decades (or in some cases nearly a century) that has been spent building such sophistication to meet the current financial reporting requirements. This is an extraordinarily heavy burden for companies and not all, even within categories such as that of “large accelerated filer,” have sufficient near-term resources to allocate in this manner to meet the artificial timeline provided by the SEC in the Proposed Rules.

The attestation requirements will further add to the complexity and cost of compliance. The assurance obligation significantly adds to the time burden by effectively requiring the work to be “done again” (even if just by reviewing the original work) in order for a third-party to provide such assurance. This would be difficult enough for limited assurance, but could become nearly impossible when looking for reasonable assurance. Given the rapidly evolving nature of emissions monitoring and climate data analysis, the methodologies for analyzing this information is still in relatively frequent flux, and achieving reasonable assurance on the time frame in the Proposed Rules may well be impossible; and, if not impossible, prohibitively costly.

Compounding these timing issues, there are only a limited number of firms that would be capable of providing the depth of analytical sophistication and expertise to provide the required attestation. In many cases, these firms are the same firms that are already tasked with providing attestation on companies’ financial disclosures. As such, there may not be sufficient capacity to provide the required attestation on companies’ emissions disclosures, not least because requiring the disclosures to be provided on Form 10-K means that attestation on both climate and financial disclosures will need to occur concurrently. For all these reasons, we urge the Commission to refrain from requiring reasonable assurance of any disclosures required by the Proposed Rules and allow companies a longer time to provide their climate-related



disclosures on an annual basis than would be permitted by requiring such disclosures in their Form 10-K.

D. The Requirement that Disclosures be “Filed” Instead of “Furnished” Significantly Increases the Risk Attaching to the Required Disclosures Due to Factors that are Largely Outside a Registrant’s Control.

Many of the concerns with the Proposed Rules are exacerbated by the requirement that disclosures largely be “filed” instead of “furnished.” As discussed elsewhere in this letter, much of the requested information is not readily within companies’ knowledge or control. This is particularly true for disclosures that require input from third parties. Although the Commission has provided a safe harbor for Scope 3 data, the Proposed Rules will likely require registrants to rely on third parties to: (1) analyze climate-related risks (including with regards to value chains); (2) measure Scope 1 and Scope 2 emissions, particularly for the production portfolio of the registrants’ energy suppliers; and (3) the assessment of financial impacts from the various required considerations on their consolidated financial statements.

These issues directly hinder companies’ ability to procure, assess, and prepare the disclosures required by the Proposed Rules. Without additional safe harbors, the potential for liability for information that companies simply do not have the best ability to obtain or confirm will likely cause companies to incur substantial additional costs on internal controls, as the Commission has noted, but without identifying any corresponding, proportional benefit to the disclosure quality as a result of such controls. As such, we recommend that the Commission permit companies to “furnish” rather than “file” their climate-related disclosures, including through a separate report that is made available on a company’s website.

III. The Proposed Rules Fail to Account for the Various Data and Methodological Constraints that Would Significantly Reduce the Effectiveness of Any Resulting Disclosures.

The Proposed Rules fail to consider the various data, consistency, comparability, and saliency issues that have been repeatedly raised with prescribing specific climate-related disclosures. As a general note, we would encourage the Commission to allow, but not require, companies to use existing, well-established standards for the provision of climate-related information instead of prescribing explicit requirements for the entirety of companies across the U.S. economy, regardless of industry, ownership structure, strategy, size, risk profile and value chain.

A. The Nature of Emissions Metrics means that the Proposed Rules Will Not Produce Disclosures That are Consistent, Comparable, or Reliable of Company Performance.

The Proposed Rules cannot actually achieve the “consistent, comparable, and reliable” disclosures that the Commission has stated they are meant to produce. The subjectivity and variability in a wide host of climate-related determinations at this time precludes the ability to



achieve such results, even with the prescriptive approach to disclosures imbued in the Proposed Rules.

For example, even a single registrant's emissions data may not be comparable year-over-year. The methodologies for such calculations have been subject to substantial change and are still subject to revision moving forward. Many times these are due to developments that are completely outside of the registrant's control, for example, ETRN's customers may be required to deliver more or less natural gas to their customers, i.e. which may result in more or less throughput – which impacts emissions respectively that could result in differences to Scopes 1 and 2. In addition, emissions factors may be revised by environmental authorities from time to time to account for changes in scientific understanding.

Scope 3 emissions are subject to even more variables that may produce inconsistency and incomparability. Scope 3 emissions are in most cases outside of a registrant's knowledge or control, as they are often dependent on actions by third-parties. Pertinent to ETRN, companies involved in the transport of hydrocarbon value chain do not necessarily have good insight on the end use of their products. Hydrocarbons flow in complex markets and have multiple end uses; they may be processed into fuels for combustion, manufactured into chemical products that are not burned (and thus do not release GHG emissions from combustion), or reformed into products that may or may not be burned.³ Even if a company can acquire information on Scope 3 emissions data from counterparties, those counterparties may not be subject to SEC regulation or subject to the sophisticated control structures of SEC-reporting companies. As such, it is unclear how such data would achieve the precision or verification needed to be consistent and comparable with other emissions information, undermining the utility of Scope 3 emissions disclosures overall. Another concern with the Scope 3 emissions disclosure requirements in the Proposed Rules is that it will almost inevitably entail the multiple-counting of emissions.⁴

³ In recent years, the uptick in interest in carbon capture and sequestration means that power plants or large industrial consumers may not produce substantial net emissions even from combustion, and this may change over time in ways that upstream and midstream companies cannot control and may not even know about. Scope 3 emissions also depend on the efficiency of consumer actions; for example, power plants may have differences in the relative efficiency of their units based on the ambient temperature, and emissions may depend on the particular combustion and emissions control technologies utilized at particular facilities. Companies will have to make a substantial number of estimates and other assumptions in order to account for these variabilities if required to report on Scope 3 emissions. This need for discretionary judgment and the uncertainty inherent in such determinations will at a minimum render disclosures inconsistent and incomparable across companies, if it does not render the disclosures completely meaningless to investors. <https://www.sciencedirect.com/science/article/pii/S235248471830249X>

⁴ Using natural gas as an example, the Proposed Rules would appear to potentially require disclosure from any combustion of that gas by: (i) a utility providing the gas to a retail customer; (ii) the company(y/ies) involved in transporting the gas to the utility and any terminals where it was stored in the transportation chain; (iii) the natural gas processing plant; (iv) the company(y/ies) transporting the gas to the processing plant; (v) the company(y/ies) owning or operating the well producing the natural gas; and (vi) any service providers for that well. This will almost invariably lead to a significant overstatement of emissions in the sector.



Applied to midstream gas companies specifically, the Proposed Rules as drafted could require us to attempt to determine, among other things: (1) the emissions profiles associated with the distinct sub-basins where natural gas we transport is produced; (2) the use of enhanced recovery, carbon capture and sequestration, or other practices or technologies that may impact the emissions profile of transported products; (3) whether the products were mixed with other components, such as natural gas liquids, as well as the ratios and emissions profiles of those components; and (4) the production methods of any fuels that may be transported. This also applies to any non-fossil fuels that may be incorporated as part of any energy transition strategy, such as transporting hydrogen or biogas. Like any other transporter, we do not have primary (if any) control or knowledge over this information, and asking us to attempt to produce disclosures accounting for such information without substantial qualification would be unduly burdensome if not impossible and does not serve investors' interests. Additionally, due to the multiple-counting issue discussed above, alleviating transporters of such a requirement would not harm investors, as the emissions would still be reported on by other parties. In fact, such a change may well improve the quality of any Scope 3 emissions disclosures by (1) streamlining reporting entities and (2) focusing the reporting obligation on the companies that have the direct insight and ability to know and control the various factors impacting the emissions figures.

For all the above reasons, along with the substantial cost and burden that even attempting to determine Scope 3 emissions in the manner required by the SEC would incur, we encourage the Commission to remove a Scope 3 emissions disclosure requirement from the Proposed Rules.⁵ However, to the extent the Commission decides to retain the requirement, we would recommend that the Commission at a minimum make sure that any obligation is tailored to those companies best able to actually assess the emissions in question, which is not a registrant whose function is merely moving products from one party to another.

B. The Commission Should Allow Companies Greater Methodological Flexibility to Account for Differences in Industry, Differences in Geography, and the Costs of Retooling Reporting Structures that Pre-Date the Proposed Rules.

As noted above, despite their heavily prescriptive nature, the Proposed Rules cannot account for every potential permutation in climate science, every point of subjectivity, every situation requiring business judgment, and other contextually-dependent factors that would impact the required disclosures. As a result, consistency, comparability, and reliability are not achieved by the Commission's heavy-handed approach to this rulemaking. Instead, the Proposed Rules require companies to adhere to a relatively narrow set of climate methodologies,

⁵ However, if the Commission retains a Scope 3 emissions disclosure requirement, it should be revised to reflect certain of the logistical and business reality concerns noted above. Importantly, the definition of Scope 3 emissions should be revised to allocate responsibility for Scope 3 emissions reporting to the party with greatest control over the emissions potential: the upstream producer. Transporters—whether courier services, a midstream oil & gas company such as ETRN, a maritime shipping company, or otherwise—are in a particularly poor position to know or control the emissions associated with the products they are shipping. We are, in effect, just the lanes that products travel through. The Scope 3 emissions requirement as drafted in the Proposed Rules would require transporters to determine (or, most likely, estimate) the emissions associated with every shipment—from plastic toys, to semiconductors, to food products, and the packaging on them—in order to make disclosures.



despite the Commission's stated concern with flexibility.⁶ Such restrictions are particularly unwarranted with regards to such a sweeping set of new requirements, as they limit how companies can procure and present information without a commensurate benefit and may impose substantial costs on companies that may have been more easily able to produce required information under another methodology. This does not promote, and in fact likely will harm, the flow of information between companies and investors that is essential to orderly markets and capital formation.

Many companies, including ETRN, have already been responsive to their investors' interests with respect to climate change-related matters, and have done so using methodologies that they believe best fit their company's industry, ownership structure, strategy, size, risk profile and value chain. The Proposed Rules would effectively require companies, and their investors, to realign to a prescribed methodology that fails to consider any of these matters. As such, we urge the Commission to revise the Proposed Rules to allow companies to make use of well-established standards (including those outlined in industry-specific frameworks), which certain companies may have been using for multiple years, for reporting on climate-related matters, including their GHG emissions, instead of mandating a methodology selected by the Commission that fails to consider a company's specific circumstances.

IV. Conclusion

Federal securities law is a balancing act: the Commission is tasked with promoting disclosures that afford investors decision-useful information without imposing excessive burdens on companies to prepare such disclosures. The Proposed Rules fail to meet that balance, both because the required disclosures would not produce the sort of consistent, comparable, and reliable information necessary for the disclosures to be decision-useful and because preparing the disclosures in compliance with the many constraints and strictures of the Proposed Rules would be prohibitively expensive and time-consuming.

Climate change is a complex topic, and not even the Commission can create rules that will address all of the potential permutations that may affect companies in different situations. That is why recasting any rule on climate-related disclosures within the Commission's long-standing commitment to a principles-based regime, and allowing companies to use their expertise and business judgment with regards to their own industry and operations, would be a more balanced approach that is also more in keeping with the Commission's mandate.

ETRN asks that the Commission carefully review our comments when assessing how to proceed with the Proposed Rules and any other initiatives regarding climate-related disclosures. I am happy to discuss our comments or any other matters that the Commission would find helpful. I can be reached at [REDACTED] or at [REDACTED].

⁶ See, e.g., Proposed Rule at 24, 408.



Sincerely,

A handwritten signature in blue ink that reads "Todd L. Normane".

Todd L. Normane
Vice President, Chief Sustainability Officer & Deputy General Counsel
Equitrans Midstream Corporation

cc: Gary Gensler, Chair of the SEC
Hester M. Peirce, Commissioner
Allison Herren Lee, Commissioner
Caroline A. Crenshaw, Commissioner

Two thick black horizontal bars used to redact the signature area.