



June 17, 2022

Submitted Electronically

Secretary Vanessa A. Countryman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

The Interstate Natural Gas Association of America (“INGAA”) is a trade organization that advocates regulatory and legislative positions of importance to the natural gas pipeline industry. INGAA’s 26 members represent the majority of the interstate natural gas transmission pipeline companies in the United States, operating approximately 200,000 miles of pipelines and transporting more than 95% of the nation’s natural gas to local gas distribution companies, manufacturing and industrial customers, gas marketers, liquefied natural gas (“LNG”) export facilities, and gas-fired electric generators. Most of INGAA’s members are public companies or subsidiaries of public companies.

INGAA respectfully submits these comments in response to the request from the U.S. Securities and Exchange Commission (“Commission” or “SEC”) for comment on any or all aspects of the rule amendments proposed by the Commission on the Enhancement and Standardization of Climate-Related Disclosures for Investors (Release Nos. 33-11042; 34-94478; File No. S7-10-22) (the “Proposed Rule”).¹

¹ 87 Fed. Reg. 21,334 (Apr. 11, 2022).

EXECUTIVE SUMMARY

Natural gas is part of the solution to addressing climate change. Increased usage of natural gas has been a primary factor behind reducing U.S. greenhouse gas (“GHG”) emissions (despite economic and population growth) and sharply declining GHG emissions from the electric power sector, as natural gas has provided a clean, abundant and affordable alternative to coal and fuel oil.² There is bipartisan recognition that the development of natural gas infrastructure like LNG export facilities “will have the . . . benefit of reducing global greenhouse gas emissions.”³ A lack of adequate natural gas infrastructure, by contrast, leads to substantial *increases* in GHG emissions.⁴

INGAA’s members are essential to the realization of the climate benefits afforded by natural gas. Our members safely, securely, and reliably transport natural gas across states from producing regions throughout the U.S. and Canada to the local gas utilities, manufacturing and industrial customers, gas-fired electric generators, and LNG facilities that use natural gas in the United States or prepare it for export abroad. Although INGAA’s members do not own the natural gas transported over their pipelines and generally do not combust the gas,⁵ INGAA recognizes the need to minimize and reduce GHG emissions from natural gas pipeline and storage facilities, including methane emissions. INGAA’s members are determined to develop and modernize our Nation’s interstate natural gas infrastructure in a manner that allows us to meet Americans’ need for reliable, affordable energy while reducing emissions that contribute to climate change.

² *Natural Gas*, Ctr. for Climate & Energy Sols., <https://bit.ly/32GaUSo> (last visited Apr. 12, 2022) (noting that “substitution [of natural gas] for coal has helped reduce [U.S.] power sector emissions to mid-1980 levels,” that U.S. natural gas production and export “can help reduce or avoid coal-based power generation in other parts of the world,” and that “the transition to natural gas has accounted for much of the decrease in greenhouse gas emissions from the U.S. electric sector in recent years”); Press Release, Int’l Energy Agency, *Defying Expectations of a Rise, Global Carbon Dioxide Emissions Flatlined in 2019* (Feb. 11, 2020), <https://bit.ly/2PdTxFk> (noting that “fuel switching from coal to natural gas” was a “primar[y]” reason that “global emissions were unchanged . . . in 2019 even as the world economy expanded by 2.9%,” with “[t]he United States record[ing] the largest emissions decline on a country basis”).

³ Mar. 31, 2022 Letter from Sens. Kevin Cramer and Christopher Coons to President Joseph R. Biden, <https://tinyurl.com/dmfydrn9>.

⁴ See EIA, *New England Natural Gas and Electricity Prices Increase on Supply Constraints, High Demand* (Feb. 3, 2022), <https://tinyurl.com/mwsxzyfk> (“Natural gas pipeline constraints limited the amount of natural gas that could be delivered to power plants, leading to the reactivation of several power plants that burn fuel oil[.]”); ISO New England, *Natural Gas Infrastructure Constraints*, <https://tinyurl.com/2p9ewwjc> (“Pipeline constraints can also affect regional air emissions during winter because the ISO has to run higher-emitting generators when gas-fired units can’t access fuel or when the price of natural gas spikes.”); Gerson Feitas Jr. and Naureen S. Malik, *New England Power Plants Burn Most Oil Since 2011 as Gas Soars*, Bloomberg (Feb. 22, 2022), <https://tinyurl.com/2p8ed549> (“New England has burned the most oil to generate electricity in over a decade this winter, despite being only a couple hundred of miles away from one of the world’s largest fields of natural gas. . . . [CO₂] emissions across ISO New England’s power network jumped 51% in January . . . from a year earlier.”); EIA, *Annual U.S. Coal-Fired Electricity Generation Will Increase for the First Time Since 2014* (Dec. 21, 2021), <https://tinyurl.com/zjtawuyu> (“The U.S. electric power sector has been generating more electricity from coal-fired power plants this year as a result of significantly higher natural gas prices and relatively stable coal prices.”).

⁵ Some natural gas is combusted by members to fuel compression stations, but the vast majority of gas transported by members’ pipelines will be combusted by a third party.

INGAA's members have voluntarily dedicated significant resources to reducing GHG emissions. Many of INGAA's members have adopted voluntary targets for reducing methane emissions. Others voluntarily report information regarding their emissions through the issuance of annual sustainability reports. Through these actions, INGAA's members have learned about the challenges associated with providing information that is reliable, consistent, comparable, and useful to the investment community.

Based on our members' experience, INGAA has concerns with certain aspects of the SEC's Proposed Rule. Specifically, INGAA maintains that:

- The implementation and reporting timelines for GHG emissions data are not feasible and unreasonably expose registrants to increased liability by requiring the disclosure of potentially incomplete or misleading data to investors.
- The proposed changes to Regulation S-X will be difficult to implement within the proposed timeframe because registrants will need to develop new internal financial reporting practices and train employees to report on data, specifically emissions data, that is not currently captured within entities' financial books and records and is not of a nature or format that can easily be incorporated into financial books and records. The accelerated implementation timeline exacerbates this difficulty. Moreover, the requirements will force the disclosure of immaterial information, based on vaguely defined terms, that is not consistent with existing SEC recommendations related to financial disclosures (*e.g.*, Staff Accounting Bulletin No. 99), which will lead to investor confusion.
- Many of the reporting requirements related to registrants' governance structure and board membership appear to elevate climate risks above other business considerations, and there is substantial likelihood that an overemphasis on one risk above all others will negatively affect INGAA's members and those who invest in INGAA's members.

Our comments identify opportunities to revise the Proposed Rule in a manner that would address these issues while also advancing the SEC's goals of providing consistent, comparable, reliable, and decision-useful information to investors while avoiding unnecessary burdens.⁶ As explained in detail below, INGAA recommends that the Commission include the following changes in any final rule:

- Provide an additional three years for each compliance deadline and eliminate any requirement for attestation for emissions data. If the final rule does require attestation, then it should only require limited assurance attestation, and the Commission should provide additional time for a sufficient market of attestation providers to develop.
- Eliminate the requirement to disclose Scope 3 emissions. If the final rule retains a Scope 3 reporting requirement, the Commission should clarify that, for interstate natural gas

⁶ INGAA agrees with and incorporates the Energy Infrastructure Council's ("EIC") letter and its comments regarding the Commission's jurisdiction and legal authority. INGAA writes separately to highlight a few additional industry-specific concerns for the Commission's consideration.

pipeline, storage, and LNG export companies, upstream production and downstream combustion emissions of the gas they transport and/or store are not Scope 3 emissions.

- Allow companies to furnish rather than file GHG emissions data for all scopes of emissions, and defer reporting of emissions for at least one additional year so that there is at least a (permanent) one-year lag between the fiscal year in which the emissions were emitted and the fiscal year filing in which they are reported. If the Commission does not provide this additional time, then the Commission should provide greater flexibility within the year that emissions are reported so that companies have at least 180 days after filing their emissions reports with the Environmental Protection Agency (“EPA”) before providing emissions to the Commission.
- Remove the proposed Regulation S-X requirements and instead allow climate-related impacts to be reported under Regulation S-K, and only reported to the extent the impacts are material. If the final rule retains the Regulation S-X requirements, the Commission should:
 - Eliminate the one-percent materiality threshold and allow companies to determine the appropriate materiality threshold consistent with other Regulation S-X disclosures;
 - Provide clear guidance on cost allocation; and
 - Remove any requirement to disclose historical period data for the first two compliance years to allow companies time to collect and track this information.
- Remove “the operations of those with whom it does business” from the definition of “physical risks”; narrow the definition of “extreme weather” while providing clear guidance on what weather events would meet this definition; and provide greater clarity about how to identify and treat “transition risks.”
- Remove the disclosure requirement regarding board expertise on climate issues. If the final rule retains the requirement, the Commission should:
 - Clarify what qualifies as “climate expertise”; and
 - Clarify that board expertise can be developed through education of existing board members, and provide examples of what education would be deemed sufficient.
- Limit or remove the specific prescriptive requirements for disclosure of internal decision-making processes and metrics and instead rely on traditional disclosure of principles-based materiality. If the final rule retains the prescriptive disclosure requirements, the Commission should require disclosure only when a company has otherwise publicly disclosed such metrics, and only to the extent it has done so without additional information about internal processes or decision-making, allowing for references to the location of such information. If the Commission requires disclosure of the use of scenario analysis, it should allow for a phase in of disclosures regarding the analysis.

- Allow Canadian issuers to comply with Canadian climate-related disclosure requirements instead of the Proposed Rules, consistent with the SEC’s approach to Subpart 1200 and Subpart 1300 disclosures for Canadian issuers reporting under MJDS and INGAA recommends that Form 40-F should not be amended.

COMMENTS

I. The Interstate Natural Gas Pipeline Industry and the Commitments of INGAA’s Members to Addressing GHG Emissions.

Our members transport and store natural gas in interstate commerce for their customers. These are important services that are vital to our national economy. There are more than 200,000 miles of interstate natural gas transmission pipelines in the United States, with an additional 100,000 miles of intrastate state-regulated transmission systems. Those pipelines supply natural gas to more than 75 million customers.⁷ Pipelines make it possible to safely deliver abundant, domestically produced natural gas to homes, businesses, and factories. Natural gas is essential to heat water, cook food, warm homes, and fuel industry. Natural gas is also used to generate electricity; indeed, in 2021, 38.3% of American electricity was generated from natural gas.⁸

Pipelines are a “midstream” link between the production and processing of natural gas (“upstream” operations) and the consumption of natural gas by homes, businesses, and power plants (“downstream” uses).⁹ “Compressor stations,” which are located approximately every 40 to 100 miles along a pipeline, compress natural gas and send it through the pipeline at a safe and constant rate. “Metering stations” measure the amount of natural gas entering and exiting at multiple points along the pipeline system, and, in conjunction with certain other equipment, may also regulate gas pressure and control delivery volumes.¹⁰

Natural gas storage adds reliability and flexibility to this complex natural gas transportation network. Through sophisticated computerized information and transaction systems and flexible daily and intra-daily scheduling, shippers can use natural gas from storage to increase available supply in the system and maximize use of pipeline capacity during peak demand periods. The additional supply drawn from storage meets shippers’ needs and dampens the price volatility that might otherwise occur because of the tight balance of supply and demand within a particular market.

Shippers inject natural gas into storage when demand is low (historically during the summer) and withdraw it during times of high demand (generally to meet peak heating demands during winter). Storage is essential to keeping the lights and heat on during the winter; natural gas

⁷ See *Pipelines 101*, INGAA, <https://www.ingaa.org/Pipelines101.aspx> (last visited Apr. 28, 2022).

⁸ *What Is U.S. Electricity Generation by Energy Source?*, U.S. ENERGY INFO. ADMIN, <https://bit.ly/3PXoYya> (Feb. 2022).

⁹ See *Operations*, INGAA, <https://www.ingaa.org/Pipelines101/Operations.aspx> (last visited Apr. 28, 2022).

¹⁰ See *id.*

from storage accounts for about 20 percent of the natural gas consumed in the winter. Shippers may use natural gas from storage in the summer to meet gas-fired electric generation needs.

The Federal Energy Regulatory Commission (“FERC”) strictly regulates the terms and conditions under which interstate natural gas pipeline and storage facilities may operate. Following a series of reforms implemented by FERC in the 1980s and 1990s, interstate natural gas pipeline companies generally do not take ownership of the gas transported over their pipelines or over stored gas, and instead sell only gas-transportation and gas-storage services.¹¹ As with operating conditions, FERC oversees the rates at which pipelines may provide these services. The vast majority of the revenue generated by interstate natural gas pipeline companies comes from long-term contracts between the pipeline company and its customers for the ability to use “capacity” on the pipeline.¹²

America’s interstate pipeline network is complex and highly integrated. Large quantities of natural gas may flow from one or more intrastate or interstate pipelines into another (or vice versa) at “interconnections,” and then be further transported on the interstate pipeline network. In addition, volumes of natural gas moved on the network dynamically change on at least a daily basis as shippers on the network nominate transportation based on their daily needs. For these reasons, midstream companies, including INGAA’s members, often lack information about the source and ultimate destination of the gas that they transport.

INGAA’s members are committed to minimizing GHG emissions—particularly methane emissions—from interstate natural gas transmission and storage operations in a prudent and environmentally responsible manner. The transmission and storage sector of the natural gas industry has reduced its methane emissions by nearly a third since 1990, even while total U.S. natural gas consumption increased by 59% during the same time frame.¹³ INGAA’s members have a history of working with regulators to ensure that natural gas pipelines, compressor stations, and storage facilities are designed and built safely and operate efficiently and in ways that minimize methane emissions. For example, INGAA’s members work with regulators to identify appropriate enhancements to reduce the risk of leaks, improve leak detection methods, and enhance standard practices. INGAA’s members report emissions data under the EPA’s current Greenhouse Gas Mandatory Reporting Rule (“EPA Reporting Rule” or “GHGRP”).¹⁴ It is the EPA—which has statutory authority to regulate GHG emissions under the Clean Air Act¹⁵—that is the appropriate

¹¹ See Kristina Mohlin, *The U.S. Gas Pipeline Transportation Market: An Introductory Guide with Research Questions for the Energy Transition*, at 6, ENVTL. DEF. FUND (Jan. 2021), <https://bit.ly/3MC0GXZ>.

¹² See *id.*

¹³ EPA, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990-2020, at 3-89 (2022); *U.S. Natural Gas Total Consumption (Million Cubic Feet)*, U.S. ENERGY INFO. ADMIN., <https://bit.ly/3tkCYs4> (last visited June 7, 2022).

¹⁴ EPA has proposed revisions to the EPA Reporting Rule that might change how emissions are calculated. See *Proposed Rule: Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule*, EPA, <https://bit.ly/3xc5MEq> (Apr. 29, 2022).

¹⁵ See generally *Mass. v. EPA*, 549 U.S. 497 (2007); see also EIC comment letter regarding EPA’s jurisdiction.

agency to create GHG reporting requirements, as appropriate. INGAA’s members analyze the information reported to EPA to identify additional opportunities to reduce GHG emissions.

To further reduce GHG emissions from natural gas transportation and storage facilities while maintaining pipeline integrity, ensuring safe operations, and minimizing adverse customer and community impacts, INGAA’s members have voluntarily implemented several practices. Among other things, the INGAA membership agreed to: working together as an industry towards reaching net-zero GHG emissions from natural gas transmission and storage operations by 2050; reducing the carbon intensity of our operations through the adoption of innovative technologies;¹⁶ and supporting the continued growth of renewable energy. INGAA’s members are also committed to the consistent and transparent collection, measurement, and reporting of GHG emissions data from operations—a complex and evolving process with technology and standards not yet fully developed—as a means of demonstrating our progress towards our climate goals.

Many of INGAA’s members engage in a variety of voluntary initiatives that are intended to reduce GHG emissions in the natural gas value chain and provide more transparency regarding their climate and sustainability initiatives. For example, many of INGAA’s members participate in the voluntary ONE Future and EPA’s Natural Gas STAR and Methane Challenge programs. With respect to voluntary reporting, many of INGAA’s members publish sustainability reports, incorporating elements of the Task Force on Climate-Related Financial Disclosures (“TCFD”) framework and Greenhouse Gas Reporting Protocol (“GHG Protocol”). In addition, some of INGAA’s members have set GHG emission reduction targets for their Scope 1 and Scope 2 emissions.

II. The Compliance Dates for the Proposed Rule Do Not Provide Sufficient Time to Prepare for Implementation.

Assuming that the Proposed Rule has an effective date in December 2022 and that the registrant has a December 31st fiscal year-end, the compliance date for the annual report disclosures under the Proposed Rule would be fiscal year 2023 (filed in 2024) for large accelerated filers, with an additional year for Scope 3 disclosures.¹⁷ The Commission should provide additional time for all filers, before the compliance dates go into effect, to give companies a reasonable window to set up systems, hire or acquire the necessary expertise, and collect and verify the necessary data for compliance. In addition, registrants will need sufficient time to coordinate with external auditors and determine if they need to adopt and implement additional audit procedures or internal controls. The Commission has vastly underestimated the time and effort it will take for registrants to develop and integrate the necessary internal reporting systems, as well as the burdens that these requirements will place on public companies going forward. Based on the experiences

¹⁶ Press Release, INGAA, *INGAA Members Announce Vision for a Clean Energy Future*, <https://bit.ly/3xfHs4q> (Jan. 26, 2021).

¹⁷ See Proposed Rule, 87 Fed. Reg. at 21,412. The SEC proposes to provide additional time for accelerated, non-accelerated, and small reporting companies. Not all of INGAA’s members are public companies or large accelerated filers, and therefore not all members are on the same proposed compliance schedule. In any final rule, the SEC should continue to provide additional phase-in time for accelerated, non-accelerated, and small reporting companies. Notably, an entity that would not otherwise be subject to the more aggressive reporting timeline for large accelerated filers will effectively be subject to that timeline by virtue of being the wholly-owned subsidiary of a large accelerated filer.

of INGAA’s members who are already engaged in voluntary disclosures, it takes years to develop the internal and external structures needed to collect and provide the type of detailed information that would be required by the Proposed Rule.

Additionally, certain requirements, such as “Scope”-specific emission disclosures, are not derived from financial books and records, and would impose internal controls over financial reporting (“ICFR”) on departments outside of those charged with financial reporting. The specific requirements of ICFR vary from company to company, but generally ICFR consists of measures designed to generate or collect auditable data and ensure the continued validity of such data. ICFR could include specific procedures for collecting financial data, a mandatory process for entering financial data into spreadsheets, password-protecting spreadsheets, limiting access to the data to a limited number of users, protocols for testing spreadsheets to protect against inadvertent changes, and other measures designed to demonstrate an adequate internal review process. The Commission’s compliance dates do not account for the work needed to implement the rule.¹⁸

A. INGAA’s members need additional time to collect and verify the required data even if they participate in voluntary disclosure programs.

The Commission may assume that most companies already have the climate-related information required by the Proposed Rule available. This is not the case. While many of INGAA’s members make some form of climate-related voluntary disclosures, very few members are tracking or reporting much of the expansive set of information that would be required under the Proposed Rule. Even members who are tracking some of the climate-related information required under the Proposed Rule are doing so in different formats (or using different methodologies) than those proposed by the Commission. INGAA’s members will need to adjust or recreate their reporting processes to capture data in the detail and in the format required by the Commission. As a result, their prior efforts to report climate-related information will not meaningfully reduce the time needed to comply with the Proposed Rule. And our members’ experience with making voluntary disclosures indicates that the Proposed Rule’s current timelines do not provide sufficient time for companies to make these determinations, collect the additional data, and verify its accuracy. Moreover, the Proposed Rule fails to appropriately account for the difference between voluntary reporting and mandatory disclosures subject to the securities laws. The burden on registrants increases exponentially when the disclosures are included in a securities filing because registrants will have to integrate the information into internal systems and verify it prior to inclusion.

The Commission also states that it is “proposing rules based on the TCFD framework” because it has “been widely accepted by issuers, investors, and other market participants,” and the Commission therefore believes that adopting a similar framework will limit compliance costs.¹⁹ But the Commission is mistaken in believing that this will meaningfully limit the costs or time required to comply with the Proposed Rule. While many companies report climate-related information under portions of the TCFD framework, the Commission incorrectly assumes that

¹⁸ To promote clarity, INGAA refers to transportation services when discussing the effects of the Proposed Rule. The effects of the Proposed Rule and the problems arising from its application to interstate natural gas pipelines, however, are the same for storage services unless otherwise noted.

¹⁹ See *id.* at 21,343.

companies' reporting is fully aligned with the TCFD framework.²⁰ According to the TCFD's 2021 status report from October 2021, 50% of the 1,651 public companies reviewed aligned with fewer than 3 of the 11 TCFD recommended disclosures, and 25% aligned with none.²¹ The majority of INGAA's members who utilize the TCFD framework likewise do not fully align with the framework in their disclosures, and some members rely on other frameworks or reporting practices that better fit their operations and industry.²²

B. Members will need additional time to meet the GHG attestation requirements.

The Proposed Rule would require all registrants to disclose their Scope 1 and Scope 2 GHG emissions as part of a company's annual reporting on Form 10-K.²³ The Proposed Rule defines Scope 1 emissions as "direct GHG emissions from operations that are owned or controlled by a registrant"²⁴ and Scope 2 emissions as "indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant."²⁵

The Commission anticipates that large accelerated filers, including some of INGAA's members, will need to file their first report including Scope 1 and Scope 2 GHG emissions in 2024, and that attestation requirements for Scope 1 and Scope 2 emissions will take effect one year later. Registrants will need to meet these emissions and attestation requirements every year on the same timeline as their annual report, meaning that many of INGAA's members will need to file in the first quarter of the following calendar year.²⁶ The Proposed Rule provides an initial transition period for a "limited assurance" attestation report followed by a subsequent transition period for a "reasonable assurance" attestation report.²⁷

Members who already disclose Scope 1 and 2 emissions data often collect, review, and disclose this data through separate internal channels than those used to review and prepare the companies' securities filings. INGAA's members will need time to realign reporting structures and educate parallel members of their staff and management about these new requirements before the GHG emissions data can be properly vetted, verified, and supplied in the appropriate form. As

²⁰ *See id.*

²¹ *See* TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, 2021 STATUS REPORT 28 tbl. B2, 30 (2021) [hereinafter TCFD 2021 STATUS REPORT].

²² INGAA also notes that the TCFD and other voluntary frameworks have not gone through a public notice and comment period to be finalized with binding mandates for companies, as is required for new regulatory requirements like the ones that the SEC proposes here. These voluntary frameworks allow companies flexibility to decide what parts of the disclosure framework are most appropriate for their operations.

²³ *See* 87 Fed. Reg. at 21,346.

²⁴ Proposed 17 C.F.R. § 229.1500(p).

²⁵ Proposed 17 C.F.R. § 229.1500(q).

²⁶ For most companies, this would require disclosure of GHG emissions in a filed SEC document more than a month prior to the March 31st deadline for reporting emissions to the EPA under the GHGRP, and several months prior to the EPA's validation of a company's emissions under the GHGRP, which typically occurs in the third or fourth calendar quarter. *See infra* Section III.A.

²⁷ *See* 87 Fed. Reg. at 21,469-70 (proposed text of 17 C.F.R. § 229.1505(a)(1)); *see also id.* at 21,392 & n.564.

mentioned above, companies will have to implement new ICFR measures to generate or collect auditable GHG emissions data and ensure the continued validity of such data. In many cases, these newly created ICFR will apply to staff and management that are not currently directly responsible for financial reporting and are therefore not familiar with the requirements of ICFR. Put simply, the Commission is not simply asking companies to report existing data; instead, it is asking them to make fundamental changes to their internal reporting structures to reach the attestation requirements.

These problems are compounded by the need to find a qualified independent “GHG emissions attestation provider,” which would be required under the Proposed Rule for accelerated filers and large accelerated filers who must include an attestation report form covering the disclosure of their Scope 1 and Scope 2 emissions. The exact qualifications for an independent “GHG emissions attestation provider” are not clear, and INGAA is concerned that there are not currently enough providers with the requisite expertise to perform this function for all public companies. While the Proposed Rule provides for an attestation phase-in period, some members will not want to report any GHG data without attestation, and therefore the phase-in of the attestation requirement does not provide meaningful help.

The attestation requirement poses its own significant challenges as it would be impractical for companies to comply with a “reasonable assurance” requirement for emissions disclosure. Respectfully, the proposed requirement appears to be based on a fundamental misunderstanding of how GHG emissions are calculated. Financial data that currently receives “reasonable assurance” represents 100% actual, quantifiable, and verifiable information. But, unlike financial data, Scope 1 and 2 emissions calculations are never completely precise or completely “knowable.” In many circumstances, GHG emissions are not directly measured. One member, for example, reports that more than 80% of its Scope 1 and 2 data are based on emissions factors or other forms of extrapolation, not actual measurements. The attestation requirement is simply inappropriate for Scope 1 and 2 emissions disclosures, and it will be extremely costly and require far more time to implement than what the Proposed Rule allows.

For purposes of reporting Scope 1 GHG emissions to EPA, operators collect, analyze, and report data using tools and methods that are not compatible with the standards imposed on financial data submitted to the Commission. These calculations often involve the use of EPA emissions factors, which EPA modifies periodically.²⁸ EPA defines an “emissions factor” as “a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant.”²⁹ Such factors “are simply averages of all available data of acceptable quality, and are generally assumed to be representative of long-term averages for all facilities in the source category.”³⁰ For example, depending on the type of source of GHG emissions, an operator might estimate annual emissions associated with that source by: (1) applying an EPA emissions factor to develop an estimate of annual GHG emissions for a source

²⁸ For example, EPA intends to propose a rule that includes updates to certain emission factors. *See* EPA, *Proposed Rule: Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule* (Apr. 29, 2022), <https://bit.ly/3mB9YZh>.

²⁹ EPA, *Basic Information of Air Emissions Factors and Quantification* (Jan. 4, 2022), <https://bit.ly/3xIcgfP>.

³⁰ *See id.*

like a natural gas-driven pneumatic valve; (2) using heat content of the fuel and the measured quantity of fuel used by the source and applying an EPA emissions factor to develop an estimate of annual GHG emissions for sources that burn fuel; (3) taking direct measurements of GHG emissions from the source using EPA approved methods at regular intervals (annually, quarterly, or other frequency), calculating the source’s annual operating hours, and using those variables to develop an estimate of annual GHG emissions; (4) estimating annual GHG emissions based on a three-year company-wide average emission rate for sources that do not undergo direct measurement in a given year; and (5) calculating GHG emissions based on the properties of specific “blowdowns” (purging the gas from a pipeline into the atmosphere in order to depressurize it so that work may be done safely on the pipeline) as logged at the facility. Operators might apply an EPA emissions factor for GHG loss per mile of pipeline to develop an estimate of annual GHG emissions for purposes of reporting to ONE Future on emissions associated with leaks from pipelines.

Operators also generally rely on EPA emissions factors to develop estimates of Scope 2 emissions. Operators typically estimate Scope 2 emissions for purchased power at a particular facility by first identifying the amount of energy used by that facility (as reflected in the kWh on the single invoice) as well as the EPA Emissions & Generation Resource Integrated Database (eGRID)³¹ region in which the facility is located. Then, operators will estimate the GHG emissions associated with that facility using the EPA emissions factor for that facility’s eGrid region.

This type of emissions data is of a markedly different nature than financial data that can be shown to be actual, quantifiable, and verifiable. INGAA’s members go to significant lengths to ensure the completeness and accuracy of financial data, through measures like automating data collection to the maximum extent possible to avoid errors resulting from manual inputs; maintaining electronic records cataloguing all actions related to generating and analyzing data, which function as an audit trail that can be reviewed by internal personnel or external parties; limiting access to data to protect against the possibility of unauthorized access or modification; and building in parallel processes to allow for reconciling and authenticating collected data. As explained above, data on GHG emissions can be generated through a combination of direct measurement by personnel, extrapolation of annual emissions based on direct measurement taken once in a calendar year, relying on average emissions across multi-year periods, or application of emissions factors or other assumptions to generate estimates. These techniques do not generate information that lends itself to the same type of verification as financial data.

The work required to achieve “reasonable assurance” of emissions data would be substantially greater than that required to achieve “limited assurance.” One member noted that it spent four years creating a Scope 1 and 2 emission inventory that receives limited assurance, and believes that it would take at least an additional two years to develop a control framework for its emissions reporting process that receives reasonable assurance. While INGAA recommends removing the attestation requirement entirely, or at most only requiring “limited assurance,” it

³¹eGRID is a comprehensive source of data from EPA’s Clean Air Markets Division on the environmental characteristics of almost all electric power generated in the United States. See EPA, *Emissions & Generation Resource Integrated Database (eGRID)* (May 17, 2022), <https://www.epa.gov/egrid>.

notes that members will need additional time beyond what the Commission has proposed for any attestation requirement.

C. The proposed timeline would force large accelerated filers to attempt to comply before the rule is finalized.

The Proposed Rule would require registrants to disclose the information required by the rule for fiscal year 2023, as well as historical information for the two prior years (2021 and 2022), effectively forcing large accelerated filers to begin the process of complying with a Proposed Rule before there is even finalized regulatory text. Pipeline customers—gas and electric consumers—will ultimately pay the price for the potentially wasted anticipatory compliance efforts should the SEC not modify its Proposed Rule, as requested by INGAA. The Commission should, therefore, revise its proposed compliance schedule in any final rule to provide registrants adequate time between the effective date of the final rule and its application, to allow companies to develop and implement appropriate programs to comply with the requirements of any final rule.

D. The proposed timeline does not provide sufficient time to collect historical data.

The current proposal to include two years of historical data is impractical. Assuming a December 2022 effective date, large accelerated filers would be required to prepare and disclose as part of the Form 10-K filed in 2024 emissions data for calendar years 2021, 2022, and 2023. INGAA’s members do not think companies have time to collect and verify that information while also creating the systems needed to report and verify information going forward. As noted above, the data that interstate natural gas pipelines have collected historically is not in the same format and not with the same granularity as the SEC has proposed. Therefore, it is not a matter of copying over historical data into the new SEC disclosures. Moreover, if processes or calculations change, such as those proposed by the EPA in its GHGRP, newly reported historical data may not match with data already reported for other programs and could cause confusion. Compliance with the disclosure timeline contemplated by the Proposed Rule would be extremely onerous for INGAA’s members and other registrants, as it would require the assembly of data for calendar year 2021, which has already passed. For some registrants, systems needed to track the information required under the Proposed Rule were not in place to track all the required info at the time the Proposed Rule was issued, and attempting to retroactively determine that data will be extremely burdensome, if not impossible. For example, without a system to track fuel usage for fleet vehicles, going back and compiling that historical information with any reasonable degree of accuracy would not be possible.

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To address these timing concerns, the Commission should:

1. Provide an additional three years for each current compliance deadline, including for the phase-in period based on filer size and status.
2. Remove any attestation requirements unless and until consensus standards are developed. If the final rule retains an attestation requirement, the Commission should:

- i. Eliminate any requirement for “reasonable assurance” attestation for emissions data and require only limited assurance;
 - ii. Provide additional time for a market of sufficient attestation providers to be developed; and
 - iii. Clarify what expertise is needed to provide attestation.
 3. Require disclosure of financial and emissions data beginning with the first fiscal year after the publication of the final rule with requirements for disclosure of historical data phased in over the course of the next two years (*i.e.*, if the rule is finalized in 2022, then companies must only report in 2025 data for fiscal year 2023) so that any disclosures are prospective only.

III. Comments Regarding GHG Reporting Requirements

INGAA’s members have several concerns with the Commission’s proposals concerning reporting of GHG emissions. INGAA first addresses its broader concerns with disclosing GHG emissions on a filed (rather than furnished) basis, including for Scope 1 and 2 emissions. INGAA then discusses its specific concerns with the Proposed Rule’s treatment of Scope 3 emissions and the Proposed Rule’s approach to GHG “intensity.”

A. The Commission should provide more time for annual Scope 1 and 2 emissions disclosures and align the disclosures with the EPA Reporting Rule.

In addition to providing more time before registrants must comply with any final rule, the Commission should also provide more time and greater flexibility with respect to the annual filing deadline. INGAA’s members have extensive experience in annual reporting of GHG emissions through both the EPA Reporting Rule and voluntary annual sustainability reporting of GHG emissions that applies the methods of the GHG Protocol. Providing GHG emissions data in an annual filing immediately following the fiscal year in which they were emitted, however, is not feasible for several reasons.

First, collecting and verifying the climate-related information each year in the format requested by the SEC will be a time-intensive exercise. Based on the experience of members already producing voluntary disclosures, this information will not be ready in time for annual filings and will require significant estimates for the fourth-quarter data, as the Commission recognizes in the Proposed Rule.³² In addition, most members have not historically provided or calculated Scope 1 or Scope 2 emissions in the manner required under the Proposed Rule, and therefore do not have a reliable trend to determine fourth-quarter data.

While the Proposed Rule would allow for the use of “a reasonable estimate of its GHG emissions for its fourth fiscal quarter” when “actual reported data is not reasonably available,”³³ the Proposed Rule would still require that the “registrant promptly disclose[] in a subsequent filing

³² See Proposed 17 C.F.R. § 229.1504(e)(4)(i).

³³ Proposed 17 C.F.R. § 229.1504(e)(4)(i).

any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter.”³⁴ Based on the experience of INGAA’s members, it may take months to verify the fourth-quarter data, and unverified estimates included in the 10-K would have the potential to mislead investors. Moreover, unverified estimates are inconsistent with the Proposed Rule’s requirements that the GHG emissions data be filed rather than furnished. As explained above, emissions data relies heavily on estimates, but would still be subject to reasonable assurance auditing standards under the Proposed Rule. Requiring registrants to file the information, rather than simply furnish it to the Commission, creates liability risks for those companies and will give investors the incorrect impression that the data is more accurate than it is. Allowing registrants to furnish information that includes emissions data and allowing sufficient time to provide fourth-quarter data that includes emissions data would give registrants the best possible opportunity to provide more accurate information for investors’ use.

Second, the Proposed Rule states that “EPA’s own GHG emissions reporting program would be consistent with the GHG Protocol’s standards, and thus with the proposed rules, a registrant may use that data in partial fulfillment of its GHG emissions disclosure obligations pursuant to the proposed rules.”³⁵ The Commission acknowledges, however, that the Proposed Rule is significantly more expansive than the EPA Reporting Rule. The EPA Reporting Rule only requires data from facilities emitting over 25,000 metric tons CO₂e/year,³⁶ whereas the Commission’s Proposed Rule requires data from *all* facilities within a company, regardless of the volume of emissions from facility.³⁷ Companies could only use data reported to EPA to *partially* fulfill the proposed SEC obligations.

Further, EPA continues to refine the methodologies for estimating and reporting GHG emissions.³⁸ EPA’s proposed refinements to its Reporting Rule are intended to improve the accuracy of reported Scope 1 GHG emissions. If the SEC finalizes the Proposed Rule and includes Scope 1 emission disclosures within that rule, then the SEC should modify its Proposed Rule to require a reporting timeline for Scope 1 GHG emissions that will allow companies to incorporate validated data submitted to the EPA under the requirements of the EPA Reporting Rule. This approach would provide investors with the most accurate available emissions information and

³⁴ *Id.*

³⁵ Proposed Rule, 87 Fed. Reg. at 21,374.

³⁶ 74 Fed. Reg. 56, 260, 56,264 (Oct. 30, 2009).

³⁷ See Proposed Rule, 87 Fed. Reg. at 21,373 (“[T]he proposed rules would require a registrant to disclose its GHG emissions for its most recently completed fiscal year.”).

³⁸ See EPA, *Proposed Rule: Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule* (Apr. 29, 2022), <https://bit.ly/3w/gxj7i>. EPA is proposing changes to Subpart W (Petroleum and Natural Gas Systems). One of the proposed changes is to update the emission factors for natural gas pneumatic devices, equipment leaks from natural gas distribution sources, and equipment at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities. EPA states that “the proposed emission factors are more representative of GHG emissions sources and would improve the overall accuracy of the data collected under the [EPA Reporting Rule] and would ultimately benefit stakeholders who rely on [the EPA Reporting Rule] data to understand the sources and magnitude of GHGs from specific facilities, as well as improve the quality of data used to inform future policy or regulation.” *Id.* at 31.

would further the Commission’s goal of improving the “consistency, comparability, and reliability of climate-related disclosures.”³⁹

Third, the EPA Reporting Rule requires the reporting of GHG emissions data on a calendar year basis, with initial data submissions due to the EPA on March 31 of the following calendar year.⁴⁰ Following the initial submission, EPA undertakes a data validation process that frequently involves conversations with reporting entities and that often do not result in final, validated data until the third quarter of any given calendar year. Indeed, EPA does not use the data provided in its National GHG Inventory Annual Reports until *two calendar years* after the data has been submitted.⁴¹ This process, and the time involved, demonstrates how complicated and time-consuming it is to determine Scope 1 emissions with the level of precision that the Commission seeks in the Proposed Rule. Moreover, the fact that EPA itself does not even use this data for two years confirms that this data will likewise be of limited utility to investors for two years.

Fourth, INGAA’s members generally focus on the submission of their mandatory data to EPA first and then collect the additional data that is required to develop a more complete inventory consistent with the GHG Protocol. The completion of these extra inventory elements takes additional time after the March 31 submission of data to the EPA. As a result, for many of INGAA’s members, the voluntary GHG inventories that they produce are typically not published until the third quarter of the following calendar year.

Fifth, the same key personnel typically would work on SEC annual filings, EPA reporting, the issuance of sustainability reports, and the climate-related disclosures required under the Proposed Rule. Each of these projects, standing alone, is a very resource-intensive undertaking for most companies. Any alignment between GHG reporting and Form 10-K filings would divert critical company resources from activities relevant to the registrants’ core businesses and, as a result, could negatively affect investors through delays or impede companies from being able to go to the market on certain types of securities transactions. For example, the financial reporting team that is responsible for the 10-K filing process will be the same personnel to collect and review the new proposed required disclosure information (financial and non-financial) provided by various accounting and non-accounting personnel. The accounting teams—such as revenue, O&M and fixed assets, who are responsible for the various financial information required under the existing 10-K SEC reporting requirements and GAAP disclosure requirements—will also be the same personnel to track, compile, and review the new proposed climate-related financial impact and expenditure metrics.

The Proposed Rule ignores these factors and requires that all Scope 1 and Scope 2 GHG emissions data be included in the annual report filed on Form 10-K, which could result in incomplete, incorrect, and duplicative data being reported. While the precise deadline for this filing will vary by registrant, INGAA’s members typically file their annual reports between November and March, with most filing in February. Moving GHG reporting this far forward in the calendar

³⁹ Proposed Rule, 87 Fed. Reg. at 21,335.

⁴⁰ 40 C.F.R. § 98.3(b).

⁴¹ See, e.g., EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2020* (2022).

year will pose multiple logistical difficulties and will essentially eliminate the ability of INGAA's members to use the EPA Reporting Rule data in completing required GHG emissions reporting.

Providing additional time for any GHG emissions reporting will help to ensure that such data meet the Commission's goal of providing investors with consistent, comparable, and reliable information. A company's 10-K will continue to provide the principles-based qualitative discussions of how climate change may impact the registrant's business, which INGAA believes to be more important to investors and their decisions than the specific emissions data required under the Proposed Rule. Allowing additional time before specific GHG emissions are reported would reduce the risk that companies must rely on unverified or projected emissions data and therefore provide investors with more accurate information and protect companies from liability risks associated with filing data they have not had time to fully vet.

In order to address these timing concerns, the Commission should:

1. Allow companies to furnish rather than file GHG emissions data.
2. Defer reporting of emissions for two years (*e.g.*, allowing 2023 data to be furnished in the filing for fiscal year 2024 or 2025) to allow sufficient time for the verification of the data, in keeping with the timeline used by the EPA for its National GHG Inventory Annual Reports. At the very least, companies should have an additional one-year lag between the year in which the GHGs were emitted and when companies must report on the emissions to the Commission.

If the final rule does not defer the reporting deadline, the Commission should:

- i. Defer the deadline to furnish GHG emissions data from the annual Form 10-K filing to 180 days after submissions are due to the EPA under the EPA Reporting Rule;⁴²
 - ii. Clarify that a registrant's filing is considered complete, even where a registrant may follow up with additional information; and
 - iii. Provide an explicit safe harbor to protect companies from liability for inaccuracies associated with relying upon estimates for all emissions, or at the very least for fourth-quarter emissions, so long as companies promptly disclose in the next fiscal year's annual filing any material difference between the estimate used and the data submitted under the EPA Reporting Rule and verified by the EPA.
3. For registrants with fiscal years that end on dates other than December 31, clarify that such companies are permitted to use calendar year emissions data to satisfy their reporting obligations under any final version of the rule, avoiding the need to create duplicative sets of emissions data.

⁴² See 40 C.F.R. § 98.3(b); *see also* 74 Fed. Reg. 56,260 (Oct. 30, 2009).

B. The Commission should remove the requirement to disclose Scope 3 emissions or, alternatively, clarify the application of this requirement to interstate natural gas pipeline companies.

Proposed Item 1504 requires the reporting of Scope 3 emissions in two circumstances: (1) where a company has established a GHG emission reduction target that includes Scope 3 emissions and (2) where Scope 3 emissions are “material.”⁴³ INGAA recommends that the SEC remove the requirements related to Scope 3 emissions in any final rule, in order to allow for the application of this metric to further develop. If the final rule includes Scope 3 emissions disclosures, the Commission should clarify that midstream interstate natural gas pipeline companies are not required to report emissions attributable to the upstream production or downstream combustion of the gas they transport or store (but do not own) as part of their Scope 3 emissions.

1. Emissions attributable to upstream production and downstream combustion are not within pipelines’ Scope 3 emissions as defined by the Proposed Rule and the GHG Protocol.

The Proposed Rule defines Scope 3 emissions to include emissions arising from “[t]ransportation and distribution of a registrant’s sold products, goods or other outputs;” “[u]se by a third party of a registrant’s sold products;” use of “registrant’s purchased goods and services;” and “[t]ransportation and distribution of purchased goods, raw materials, and other inputs.”⁴⁴ The Proposed Rule further states that the SEC “based [its] proposed GHG emissions disclosure requirement primarily on the GHG Protocol’s concept of scopes and related methodology.”⁴⁵ Under the GHG Protocol, a company’s Scope 3 emissions would include emissions attributable to the “[u]se of *sold* products” and to use of “purchased or acquired by” companies.⁴⁶

Neither the emissions created from upstream production of the natural gas nor the emissions created from downstream combustion of the natural gas are within the Scope 3 emissions of INGAA’s members under these definitions. INGAA’s members do not sell the natural gas commodity⁴⁷ and do not take title to the natural gas they transport and store. The products “sold” by INGAA’s members are transportation and storage services, not natural gas as a commodity. Pipeline shippers (the *customers* of INGAA’s members) own the gas. Nor is natural

⁴³ See Proposed Rule, 87 Fed. Reg. at 21,378 (Scope 3 emissions will be material when they make up a “relatively significant portion of a company’s overall GHG emissions”).

⁴⁴ Proposed 17 C.F.R. § 229.1500(r); GHG Protocol, *supra* note 46.

⁴⁵ Proposed Rule, 87 Fed. Reg. at 21,345.

⁴⁶ Greenhouse Gas Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard*, at 49 (2011), <https://bit.ly/3w3cXyi> (emphasis added) (“GHG Protocol”). The Technical Guidance for Scope 3 emissions suggests that “end users of fuels” could report “[u]pstream emissions of purchased fuels” as part of their Scope 3 emissions, but interstate natural gas pipelines are not “end users of fuels” and do not “purchase[] fuels,” but rather merely transport and store them. See *Technical Guidance for Calculating Scope 3 Emissions: Supplement to the Corporate Value Chain (Scope 3) Accounting & Reporting Standard*, at 39 (2013), <https://bit.ly/3snjjau>.

⁴⁷ Occasionally, a pipeline may need to sell gas left on its system by pipeline customers to maintain the safety and reliability of the system. The pipeline then credits the sales price back to shippers.

gas a “product” of midstream interstate natural gas pipeline companies; instead, the relevant “product” is transportation or storage service itself rather than the underlying commodity.

The Proposed Rule’s guidance to “oil and gas product *manufacturers*”—which states that manufacturers’ Scope 3 emissions are likely to be material—does not bring emissions arising from gas transported over interstate natural gas pipelines within the pipelines’ Scope 3 emissions.⁴⁸ The Proposed Rule provides no analogous guidance to oil and gas product *transporters*, who are in a materially different situation than manufacturers because (at least with respect to interstate natural gas pipelines) they do not own the hydrocarbons at issue. The Commission should clarify that, regardless of what types of Scope 3 reporting might be required with respect to “product *manufacturers*,” product *transporters* should not be required to include emissions attributable to the upstream production or downstream combustion of natural gas in their Scope 3 emissions.

2. Forcing pipelines and storage facilities to report emissions attributable to upstream production and downstream combustion will not aid in the assessment of transition risks.

It would not further the policy goals underlying the Commission’s proposal to include within the definition of the Scope 3 emissions of interstate natural gas pipeline companies the emissions resulting from the upstream production or downstream combustion of gas that those companies transport and store. The Commission offers two primary policy reasons that investors may find Scope 3 emissions data to be useful: (1) to aid assessment of the exposure of a company to transition risks⁴⁹ and (2) to assess the ability of a company to influence GHG emissions throughout its supply chain. Neither policy goal would be served by forcing INGAA’s members to report upstream and downstream emissions as part of their Scope 3 emissions.

The Proposed Rule already requires companies to make extensive disclosures about transition risks and how they might be managed under Items 1502 and 1503. The disclosure of Scope 3 emissions thus imposes significant burdens on registrants without offering investors any additional, decision-useful information regarding transition risks.

The Proposed Rule also suggests that Scope 3 emissions may be useful as an additional benchmarking tool to compare the extent of transition risks across registrants. However, this rationale asks Scope 3 emissions data to do far too much, and risks conflating the precision of Scope 3 data with accuracy. To date, the vast majority of Scope 3 emissions calculation methodologies rely extensively on *estimates* of emissions. Given the current wide range of methodologies for calculating Scope 3 emissions, and the resulting range in the emissions estimates they produce, requiring Scope 3 emissions disclosures is not likely to produce information that will provide investors with tools to assess transition risks that go meaningfully beyond the disclosures already required under existing SEC rules and other sections of the

⁴⁸ Proposed Rule, 87 Fed. Reg. at 21,378-79 (emphasis added).

⁴⁹ *Id.* at 21,377 (“Such data may reveal changes in a registrant’s Scope 3 emissions over time that could be informative for investors in discerning how the registrant is managing transition risks. . . . Being able to compare Scope 3 emissions over time could thus be a valuable tool for investors in tracking a registrant’s progress in mitigating transition and other climate-related risks.”).

Proposed Rule. To the contrary, requiring Scope 3 emissions reporting at this juncture is more likely to produce information that is potentially misleading or confusing to investors.

The Commission’s second potential rationale for requiring the disclosure of Scope 3 emissions—to assess the ability of a company to influence GHG emissions throughout its supply chain—is also inapplicable here. This rationale is most consistent with the GHG Protocol’s Scope 3 reporting guidance, which focuses on ownership or control of products in determining the boundaries for the calculation of Scope 3 emissions. Once again, interstate gas pipelines cannot influence GHG emissions throughout its supply chain since they neither control where pipeline shippers purchase their gas nor the ultimate destination or use of the gas that they transport.

3. The interstate natural gas market design makes it virtually impossible for pipelines and storage facilities to accurately estimate emissions attributable to upstream production and downstream combustion.

It would be unworkable and unfair to require interstate natural gas pipeline companies—the “midstream” transporters who generally never own or use the natural gas that they transport and store—to provide information about GHG emissions from either the upstream producers or downstream end-users as part of their Scope 3 reporting. FERC’s restructuring of the interstate natural gas pipeline industry established a competitive pipeline network where pipeline customers could access gas from across the country and transport it over multiple pipelines to end users. Although midstream companies will know how much gas has been transported or stored on their system, they often are not privy to information regarding the source, ultimate destination, and end use of the natural gas flowing through their pipes. For example, large quantities of gas may enter a pipeline system after having been transported from another pipeline system or through a market hub, and in such cases, details regarding the location or manner of initial production would not be available. Further, not all gas that travels on a midstream company’s pipeline is routed to an identifiable end user. Natural gas may instead be transported to an “interconnect” with another pipeline owned by another entity, and then further transported on the interstate pipeline network. Once that natural gas passes through the interconnection onto another pipeline, the ability to “track” the natural gas is lost. Natural gas may also be sold into a market hub or exported with an unknown end use.⁵⁰ These are unavoidable realities that follow from the current market design for transportation of natural gas.

INGAA’s members cannot fill these knowledge gaps by asking their shippers to provide the relevant information. Often those shippers themselves do not necessarily know where the gas they contracted to transport was originally produced. Even if a shipper did have this type of information, obtaining it would be challenging and expensive, as has been demonstrated by the difficulty in obtaining information from vendors about conflict minerals. INGAA’s members would then have to attempt to verify any information collected from shippers or other third parties, which would take additional time and expense without providing any clear benefit to investors. The second-hand information received by an INGAA member may also be premised on

⁵⁰ This is true for gas sold by shippers as well as gas sold by pipelines incidental to transportation service.

assumptions that differ significantly from assumptions used by other shippers of the same pipeline company, creating inconsistent data likely to be useless or confusing to investors.

Some may argue that pipelines can address this uncertainty by assuming that all natural gas which travels on an interstate pipeline system is ultimately combusted, that all combustion generates a uniform volume of emissions, and that all combustion of natural gas leads to an increase of GHGs in the atmosphere. These assumptions are unreasonable for multiple reasons.

First, natural gas may be used as an input for industrial or manufacturing process (e.g., it may be used as feedstock for production of fertilizer or chemicals). For example, the Energy Information Administration (“EIA”) Manufacturing Energy Consumption Survey recently found that 13% of gas used in the manufacturing sector in 2018 was for non-fuel (feedstock).⁵¹ Even when a specific end user is known, information about GHG emissions from combustion of delivered gas is not necessarily available. Although GHG emissions from certain types of end users can be reasonably estimated (e.g., residential use), there is less predictability with respect to industrial end users whose GHG outputs can vary widely based on a large number of factors.⁵²

Second, natural gas transported by the pipeline may ultimately displace other fuels, such as coal or heating oil, leading to a *reduction* of GHGs in the atmosphere. For purposes of estimating the effects of GHGs on climate change, only *net* additions to GHG in the atmosphere matter; a project emitting 1 million tons CO₂e will not exacerbate climate change if it offsets 1 million and 1 tons. Natural gas is used in many areas of the country and around the world as a substitute for higher GHG-emitting fuels. Many INGAA members operate pipelines that supply feedgas to LNG terminals, for example, and that gas is in turn liquefied and exported to nations like China, where it frequently substitutes for coal. Although this general market dynamic is well known to INGAA and its members, it may nonetheless be difficult to identify whether natural gas transported on its particular system displaced another particular fuel source (and if so, what that alternative fuel and its emissions may have been). It is likely that many if not *most* new projects would reduce, or have no effect on, net GHG emissions. The EIA predicts that halting *all* new interstate pipeline

⁵¹ EIA, *2018 MECS Survey Data* (2021), <https://bit.ly/3O2ycYp>.

⁵² FERC is currently considering revisions to its Certificate Policy Statement, including some revisions that could require interstate natural gas pipeline companies to provide data that would allow FERC to estimate future upstream and downstream GHG emissions. INGAA notes that the legal questions of whether upstream and downstream GHG emissions may be either “reasonably foreseeable” under the National Environmental Policy Act or relevant to the public-interest analysis under the Natural Gas Act are distinct from the separate questions of whether such emissions fit within the Scope 3 framework under the GHG Protocol and the SEC’s Proposed Rule and whether pipelines can calculate actual upstream and downstream GHG emissions accurately. Moreover, the GHG estimates contemplated by FERC’s draft policy statements would require estimates of *future* emissions, and those estimates may not precisely match actual emissions once a project is certificated and placed into service. By contrast, the Commission’s proposal calls for *backward*-looking disclosures concerning Scope 3 emissions. The Commission’s proposal to introduce a new and iterative Scope 3 reporting requirement is therefore likely to increase confusion, given that emissions predicted (to FERC) will not necessarily (or likely) correspond to backwards looking emissions reported (to the Commission), ergo leading to competing slates of figures that may be difficult for investors to reconcile.

development would have minimal overall effects on U.S. GHG emissions (at the cost of very substantial price increases for end-users).⁵³

The natural gas market design renders the generation of accurate Scope 3 emissions estimates by interstate natural gas pipelines virtually impossible. Relevant information about upstream and downstream emissions typically is unavailable to natural gas pipelines or would be unduly burdensome to obtain. Any estimates derived without this information would require pipelines to stack assumption on top of assumption, making the estimates of little value to investors.

In effect, pipelines are analogous to highways, which vehicles travel over without ever becoming property of the highway. Under this same analogy, storage facilities are like parking garages where the vehicles may wait for a certain length of time before traveling further on the highway. Although the highway operator might be able to estimate the number of vehicles that drive on a highway in any given period of time, the operator cannot verify with any degree of accuracy the origin of each vehicle, the emissions arising from each vehicle's production, the destination of each vehicle, the emissions arising from each vehicle's activities once it reaches its destination, and each vehicle's fuel efficiency. Likewise, a parking garage operator does not know or influence where the cars parked there at any given time came from, or where they will go next. Indeed, in this analogy, the owners of the "cars" may buy, sell, or trade the cars to other owners multiple times while they are parked in the garage. Any estimates of the "upstream" and "downstream" emissions of cars traveling over the highway or parked in the garage therefore would be uninformed speculation. The same considerations hold true for interstate natural gas pipeline companies.

To INGAA's members' knowledge, no interstate natural gas pipelines currently disclose significant information related to actual downstream emissions as a result of these challenges.

4. Investors are unlikely to find estimates of emissions attributable to upstream production and downstream combustion material.

Even if pipelines could estimate upstream and downstream emissions with any accuracy, investors are unlikely to find these estimates to be material to their investment decisions. Federal law requires interstate natural gas pipelines to provide "open access" transportation; pipelines cannot discriminate against shippers based on the source, destination, or end use of the gas that they seek to transport. The financial prudence of investing in a pipeline company therefore depends on the long-term demand for outbound transportation capacity (which generates stable operating cash flows), not the source, destination, or the particular manner in which gas is utilized by an end user. Moreover, the end users of the pipeline's transportation capacity often change over the decades-long life of a pipeline project. In some cases, pipelines will even reverse the direction of flow to account for shifts in demand. As a result, reporting upstream and downstream emissions would undermine rather than further the Commission's goal of providing investors with consistent, comparable, and reliable information.

⁵³ EIA, *AEO2022 Issues in Focus: Exploration of the No Interstate Natural Gas Pipeline Builds Case* (Mar. 30, 2022), <https://tinyurl.com/m34j8fpx>.

Moreover, the Proposed Rule acknowledges the potential of “double counting” resulting from any significant overlap in the categories of activities that produce Scope 3 emissions.⁵⁴ In response to this concern, the Proposed Rule provides that in such cases, a registrant can describe the overlap, detail how it has accounted for such overlap, and explain the effect this has on the total Scope 3 emissions disclosed.⁵⁵ However, the Commission’s focus remains squarely on the registrant itself and does not consider the double counting by *different* entities. For example, the emissions from a pipeline company could also be attributed to another entity in the value chain, such as upstream companies that produce natural gas or downstream companies that combust natural gas (or other upstream or downstream pipelines). Indeed, the sheer volume of transactions performed every day make it impractical to even estimate double, triple, or even greater multiples of overcounting. It is not uncommon for natural gas molecules to travel from a well, then over three pipelines to an industrial user, where it is combusted. In such a case, the molecules are combusted only once but would be reported to the SEC five times. No investor would find it helpful to have emissions overstated by a factor of five.

5. The proposed Scope 3 “safe harbor” provisions are insufficient to provide protection if the Commission requires pipelines to disclose estimate of emissions attributable to upstream production and downstream combustion.

Given the inability of INGAA’s members to accurately determine upstream or downstream emissions, and the fact that INGAA’s members are not in control of such information, requiring INGAA’s members to report such emissions as part of their Scope 3 disclosures would expose them to unfair and unjustified liability risks. The proposed safe harbor does not sufficiently protect against these liability risks. In addition, the proposed safe harbor provided for Scope 3 emissions disclosures would only apply to actions by the Commission, would not give registrants protection against liability charges not based on fraud, and would not provide any protections against litigation initiated by private plaintiffs.⁵⁶ For example, because these emissions are unlikely to be considered forward-looking statements, they would not be protected under safe harbor provisions in the Private Securities Litigation Reform Act.

6. Requiring the disclosure of Scope 3 emissions will discourage registrants from setting goals to reduce these emissions.

The Proposed Rule requires the disclosure of Scope 3 emissions “if material” or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions. Reporting Scope 3 emissions in the context of an SEC filing is an extremely onerous undertaking. The Commission will effectively deter registrants from setting a reduction goal, including one for Scope 3 emissions, by requiring registrants to calculate and disclose those emissions. This will undermine efforts to address climate change, and this provision should therefore be removed.

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⁵⁴ Proposed Rule, 87 Fed. Reg. at 21,388.

⁵⁵ See Proposed 17 C.F.R. § 229.1504(e)(8).

⁵⁶ See Proposed 17 C.F.R. § 229.1504(f).

A pipeline's Scope 3 emissions should not include emissions from natural gas that the pipeline only transports or stores. This is the best reading of the definitions included in the Proposed Rule and is in keeping with the GHG Protocol. At a minimum, the Commission should clarify that it will defer to a registrant's reasonable judgment when identifying categories of and the calculation of Scope 3 emissions.

Furthermore, upstream and downstream emissions associated with a pipeline will not be "material" under the GHG Protocol's Scope 3 Guidance. But the Commission's Proposed Rule lacks adequate guidance on Scope 3 emissions and will likely require interstate natural gas pipelines to undertake costly and time-consuming analyses simply to demonstrate that there is no need for them to report Scope 3 emissions. Moreover, many of INGAA's members do not report at the member-company level, but rather at the level of the corporate parent. In such case, Scope 3 emissions may potentially be determined to be material at the parent level but not at the member level (such as where the pipeline has a local gas distribution company affiliate).

Given that there are multiple ways to define Scope 3 emissions, if the Commission does not entirely remove the requirement to disclose Scope 3 emissions, then it would be appropriate for the Commission to first put out a proposed definition of Scope 3 emissions for a separate public comment period. This is a sufficiently complex and important issue that the Commission should provide greater clarity and allow the public a chance to weigh in on a more specific definition than the current open-ended definition in the Proposed Rule.

In order to address these concerns, the Commission should:

1. Eliminate the requirement for disclosure of Scope 3 emissions altogether.
2. If the Commission does not eliminate the disclosure requirements for Scope 3 emissions, it should facilitate an additional comment period to achieve clarity on the precise definition of Scope 3 emissions.
3. If the final rule retains the Scope 3 reporting requirement, the Commission should provide that any Scope 3 emissions will only be required when a reporting company has otherwise voluntarily publicly disclosed a GHG emission reduction target or goal that includes its Scope 3 emissions.
4. Clarify that for interstate natural gas pipeline companies, upstream production and downstream combustion emissions are not within Scope 3 for companies that do not hold title to the gas while it is being transported or stored. This is consistent with the GHG Protocol's approach.
5. Provide that emissions data is furnished rather than filed for all scopes of emissions.

C. GHG Intensity should include throughput data.

The Proposed Rule would define "GHG intensity" (or "carbon intensity") to mean "a ratio that expresses the impact of GHG emissions per unit of economic value (*e.g.*, metric tons of CO₂/e per unit of total revenues, using the registrant's reporting currency) or per unit of production (*e.g.*,

metric tons of CO₂/e per unit of product produced).⁵⁷ For the interstate natural gas pipeline industry, the appropriate and commonly accepted intensity metric is not financial in nature, but rather is a measure of GHG emissions relative to volumes of natural gas transported by the company. This denominator is known as “throughput.”

INGAA therefore respectfully requests that the Commission include throughput data in the definition of GHG intensity for the natural gas supply chain. INGAA notes that determining throughput is a complex issue and the Commission should devote appropriate time to consulting with industry and its sister agencies with greater expertise in these issues before finalizing any requirements.⁵⁸

D. The Commission should use operational control to establish organizational boundaries

The Proposed Rule would set organizational boundaries for GHG emission data with the scope of the consolidation for the rest of a registrant’s financial statements. The Commission specifically requested comments on whether situations could arise where this would be impracticable, and whether in the alternative it should allow organizational boundary approaches recommended by the GHG Protocol, such as by financial control, operational control, or equity share.⁵⁹ INGAA strongly recommends that the Commission use operational control to set organizational boundaries for any GHG disclosures. This would be in keeping with the EPA’s approach and thus prevent any final rule from subjecting members to yet another additional burden related to separate and mis-aligned reporting of GHG emissions to multiple agencies. Requiring “equity”-based reporting would be extraordinarily complicated and expensive, and—by departing from EPA’s approach—would undermine the Commission’s suggestion that data collected for purposes of EPA reporting could be cross-utilized for SEC reporting. Requiring reporting based on the consolidation for the rest of a registrant’s financial statements will result in information that is not comparable across companies.

IV. Comments Regarding Regulation S-X Requirements

The Commission proposes to add a new article to Regulation S-X that would require climate-related financial metrics to be included in a note to the registrant’s filed financial statements.⁶⁰ The financial impact metric disclosure requirements in Proposed Rules 14-02(c), (d), and (i) would require a registrant to disclose the financial impacts of severe weather events, other

⁵⁷ See Proposed Rule, 87 Fed. Reg. at 21,382.

⁵⁸ Emissions intensity metrics are clear in the upstream production sector (where gas is initially introduced into the system and measured at each producing facility) and for the local gas distribution sector (where gas is delivered to end-user meters). In those contexts, the net amount of gas produced or delivered is only counted once and only counted by a single company. Determining pipeline throughput is more complex for the midstream transmission and storage sector, where the same molecules of natural gas are often transported from one transmission gas pipeline entity to another and that gas may financially change ownership multiple times without the pipeline operator knowing. This change of custody can also happen multiple times within the same parent company, meaning that the same gas might be counted more than once by the same company.

⁵⁹ 87 Fed. Reg. at 21,388.

⁶⁰ See *id.* at 21,464 (proposed text of 17 C.F.R. § 210.14-01).

natural conditions, transition activities, and identified climate-related risks on the consolidated financial statements included in the relevant filing unless the aggregated impact of these events and activities is less than one percent of the total line item for the relevant fiscal year.

INGAA recommends that the Commission delete this requirement because disclosure of the financial information pursuant to the proposed amendments to S-X will not result in comparable and decision-useful information. The Commission argues that the disclosure of climate-related financial statement metrics will increase transparency as to the impacts of climate-related events and that investors can utilize this information when making investment or voting decisions.⁶¹ The Commission also states that such disclosures would provide additional insight into the registrant’s business, to include implementation of targets and goals, as well as the material trends in climate-related impacts,⁶² and that such data will also improve comparability as to the registrant’s year-to-year disclosures and as to other registrants.⁶³ Much of the information required under the Proposed Rule will not provide the SEC and investors with any more decision-useful information than is currently available, when viewed *in addition* to what registrants are already required to disclose—the material financial impacts on their financial statements. This incremental information will not improve the total mix of climate-related information that is already available to investors. Furthermore, such disclosure requirements may be inappropriate because they could distort investor perceptions by elevating climate-related financial impacts above others.

In addition, the proposed revisions to Regulation S-X create substantial implementation difficulties, and in many cases are infeasible or unclear. The following aspects of the Proposed Rule are particularly problematic:

One-Percent Threshold: Public company disclosure is already anchored on the “materiality” standard, which has withstood the test of time. The proposed one-percent impact to any financial statement line item threshold is an unprecedentedly low threshold for disclosure, and will almost always be below current audit thresholds for materiality, and significantly below the typical five percent “rule of thumb” used by many registrants and auditors in assessing materiality.⁶⁴ Rather than being grounded in any traditional notions of materiality, the Commission appears to have selected the threshold because the Commission uses it in certain other situations unrelated to expenditures related to climate-related risks or opportunities.⁶⁵ INGAA notes that the TCFD framework, which the Proposed Rule utilizes as a model, does not specify a threshold.

Given the disparity between the SEC’s proposed requirement and existing audit thresholds, a significant overhaul of a registrant’s financial reporting practices will need to occur. Moreover, companies will still be required to engage in data collection and the subsequent calculations to determine that they fall below the proposed one-percent threshold for materiality. Companies will be required to “show their work” to the Commission to demonstrate that disclosure is unnecessary.

⁶¹ *Id.* at 21,368.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Staff Accounting Bulletin No. 99 (Aug. 12, 1999).

⁶⁵ *See* Proposed Rule, 87 Fed. Reg. at 21,366 n.347.

This will be a burdensome process because determining which costs qualify will require many complex judgment calls when climate-related risks were just one of many considerations in evaluating a business's financial performance.

The disclosures will also be misleading. For example, at a one-percent threshold, a weather event like Harvey or Sandy could impact every line item on a registrant's financial statements, resulting in an excessive disclosure about one factor impacting results in a given period regardless of materiality. This information will be misleading as there will be no similar discussion of other factors having a similar impact to the financial statements but not included because they are viewed through the traditional materiality threshold. This will give investors the false impression that the registrant's actual performance is driven by "climate-related" factors, especially considering the discussion would be larger than the actual financial statements themselves. But many other factors are also important to members' operations. For example, many of INGAA's members are in the process of implementing the Pipeline and Hazardous Materials Safety Administration Mega-Rule, which is expected to generate significant and costly changes to operations and facilities in order to improve pipeline safety, especially in locations that are heavily populated. By over-emphasizing climate change impacts as compared to obligations under frameworks like the Mega-Rule, the Proposed Rule could give greater prominence to climate change than to the safety of communities and fellow citizens.

Methodology: The Proposed Rule does not provide any guidance on the methodology to gather, assess, and report on the requested information. Nor does it explain how a registrant should separate its expenditures and attribute a specific portion to climate-related impacts when, as often is the case, there are several factors affecting any given line item.

Moreover, the Proposed Rule requires registrants to disclose the impacts on financial statement line items related to severe weather events, other natural conditions, and transition activities if such amount exceeds one percent of the related line item. This may result in registrants having to maintain two sets of books in order to quantify the financial statement line item impact for certain items. For example, based on the Proposed Rule, a registrant may conclude to shorten the asset life of certain assets as a result of transition activities, which in turn results in higher depreciation expense for those assets. In order to quantify the financial statement line item impact, the registrant will need to maintain the depreciation expense based on the original asset life and compare that to the higher depreciation expense based on the revised shorter asset life. The effort to track two sets of books for disclosure purposes could compound as registrants continue to make assessments based on their continuous development of new transition activities or strategies to address climate-related risks. Furthermore, the Proposed Rule permits but does not require the disclosure of climate-related opportunities. However, registrants may be required to maintain the records under the original practice (or develop estimates for what the amount would have been if it were under the existing practice) in order to quantify the actual or potential positive impacts (e.g., cost savings, increased resource efficiency, etc.) for disclosure purposes.

Historical Periods: The Proposed Rule requires historical data "to the extent available" but provides no guidance as to what "available" means, beyond stating that it will not require

“unreasonable effort or expense” to collect the data.⁶⁶ The Proposed Rule also does not clarify how members could determine the specific backward-looking, regulatory-driven impact. Given that the Proposed Rule would require historical data for large accelerated filers for fiscal year 2023 (if finalized in 2022), those filers would need to determine how to collect data for fiscal years 2021, 2022, and 2023 based on the proposed one-percent threshold. Some members have not been tracking all of the emissions data that the Commission is requesting or have not been tracking emissions in the formats or with the level of precision required for SEC filings. An attempt to retroactively collect and verify that information now would be extremely costly and burdensome.

In order to address these concerns, the Commission should:

1. Remove the proposed Regulation S-X requirements and instead allow climate-related impacts to be reported under Regulation S-K only to the extent they are material. If the final rule retains the requirements in Regulation S-X, the Commission should:
 - i. Allow companies to determine the appropriate materiality threshold consistent with other Regulation S-X disclosures; and
 - ii. Provide clear guidance on how costs should be allocated.
2. Clarify the acceptable and feasible methodologies to gather, assess, and report on the requested information and how a registrant should separate its expenditures and attribute a specific portion to climate-related impacts when, as often is the case, there are several factors affecting any given line item.
3. Remove any requirement for historical period data for the first two compliance years to allow companies time to collect and track this information and to apply this concept on a prospective basis.

V. Comments Regarding Regulation S-K requirements

A. Many of the proposed definitions are overly broad and vague.

The Proposed Rule includes a number of broad and vaguely defined terms that will make the proposed disclosure requirements difficult to implement.

Physical Risks: The Proposed Rule defines “physical risk” to include “acute and chronic risks to a registrant’s business operations *or the operations of those with whom it does business.*”⁶⁷ Determining physical risks associated with members’ own operations, particularly given the zip-code level disclosures, poses significant challenges, especially given that many pipelines are customers of other pipelines whose facilities may span hundreds of miles. INGAA’s members are at least already familiar with the process for determining risks to their own physical assets. The added requirement to assess the physical risks to “those with whom” INGAA’s members “do[]

⁶⁶ *Id.* at 21,384.

⁶⁷ *See id.* at 21,465 (proposed text of 17 U.S.C. § 229.1500(1)).

business” is infeasible. This would require INGAA’s members to collect similar granular, location-specific information about potential risks to the operations of its shippers and others across their supply chain. Many companies within a registrant’s supply chain likely do not collect this information, and lack the sophistication to do so, raising the risk that this requirement will result in incomplete, or inaccurate data. Moreover, to the extent that such information is available, compelling disclosure of that information could have security risks, especially if the location of sensitive assets is required to be reported at the zip-code level.

Extreme weather and other natural conditions: The Proposed Rule does not provide sufficient guidance about what should be considered “extreme weather.” This will be particularly challenging for interstate natural gas pipeline companies whose lines span great geographic distances, given that what is “typical” for a particular region will vary widely. Physical infrastructure tends to be built with the local climate in mind. For example, a storm event that would be considered “extreme” in an arid environment may be typical for areas of the Gulf Coast. Conversely, a deep freeze can have significant impacts in the South, whereas the Northeast regularly experiences freezing temperatures.

For interstate natural gas pipeline companies, the impacts of such weather events may be positive or negative, depending on how they impact other pipelines that deliver to the same region, and whether they result in increased demand (*e.g.*, a need for more natural gas for heating during a cold weather event).

Transition risks: Determining the impacts related to transition activities will be particularly difficult because energy transition risks and related activities are highly speculative given the lack of existing, economical technologies to meet aspirational emissions reduction policy goals over the coming decades and the ability for governments and regulators to make unpredictable changes to the transition requirements. It may not always be possible to determine whether an activity is solely or partially related to transition or other market or political dynamics. Additionally, other regulatory agencies are issuing rules that interstate pipelines must comply with that could relate in part to transitional risks, but may also address a broader range of concerns. In such circumstances, it is not clear how the costs and other risks related to compliance with the new requirements should be allocated or treated. Speculative energy transition assumptions may significantly over- or underestimate impacts, and could therefore be misleading to investors. Without additional clarity regarding this requirement, companies are likely to take a number of divergent approaches to determining how to identify transition risks, which will reduce comparability.

In order to address these concerns, the Commission should:

1. Remove “the operations of those with whom it does business” from the definition of “physical risks.”
2. Narrow the definition of “extreme weather” and provide clear guidance on what weather events would meet this definition.
3. Provide greater clarity about how to identify and treat “transition risks.”

B. The Commission should not prescribe the level of climate expertise that boards must possess and should limit governance and decision-making disclosures.

In any final rule, the Commission should clarify that a prescribed level of climate-related board expertise is not required and limit the other disclosures of internal governance and decision-making to those already required under a principles-based materiality standard.

1. The proposed language regarding climate expertise is problematic.

The Proposed Rule currently requires disclosure of information regarding “whether any member of the board of directors has expertise in climate-related risks” and, if so, requires registrants to detail the nature of such registrant’s board member expertise.⁶⁸ INGAA is concerned that the Proposed Rule could be construed as suggesting a company’s governance structure is deficient in the absence of a board member with climate-related expertise or even as requiring every public company to have a board member with climate-related expertise. Such a requirement would be problematic for several reasons. *First*, it is not clear from the language of the Proposed Rule what level of expertise the Commission would deem sufficient to meet such a requirement. *Second*, depending on how expertise is defined, it is very unlikely that there are enough individuals otherwise qualified to fill board positions who have climate-related expertise for all companies subject to the Proposed Rule. *Third*, some INGAA members do not have boards large enough to accommodate a climate-specific member. *Fourth*, the proposal fails to account for the fact that the term “climate-related risks” is defined broadly in the Proposed Rule, and may be captured by much of the expertise already existent on boards. For example, there is no guidance offered on differentiating a board member that has expertise in the legal or regulatory arena from a board member that would have expertise related only to the transition risk-related aspects of the legal/regulatory arena, provided those would even be considered distinct.

More fundamentally, the proposed requirement is problematic because the emphasis on climate expertise will have the practical result of elevating climate issues above other business considerations, thus removing the flexibility that companies need to select the right board members for their unique circumstances. A company’s board is responsible for overseeing all aspects of the business, and regulations that overemphasize one particular aspect of operations skew the focus of the board and could detrimentally impact the company and, ultimately, shareholders. While climate-related issues may be key for some companies, justifying particular focus on these issues, this is not universally true. The proposed requirement also ignores the reality that climate expertise will naturally evolve within companies if these climate-related issues become important to their business and their investors. As with other issues that have emerged over the past few years, like developments in technology, board members as well as members of management will become climate-literate or even “climate experts” as the business demands they obtain this knowledge. INGAA members continue to build the knowledge necessary to tackle climate issues, as demonstrated by the commitments our members have already made towards addressing GHGs from their operations. Mandating such expertise through regulations disrupts the natural evolution of these processes and micromanages board composition.

⁶⁸ See *id.* at 21,467 (proposed 17 C.F.R. § 299.1501(a)).

In order to address these concerns, the Commission should remove the disclosure requirement regarding board expertise. If the final rule retains the current disclosure requirements, the Commission should:

1. Clarify what qualifies as “climate expertise.”
 2. Clarify that a climate-specific expert on the board is not required.
 3. Clarify that board expertise can be developed through education of existing board members and provide examples of what education would be deemed sufficient.
- C. The proposed disclosures related to internal processes and decision-making around climate issues will be counterproductive.**

Proposed Item 1501 of Regulation S-K would require all reporting companies to make disclosures on the oversight of climate risks by management and the board of directors. Proposed Item 1502 would require all companies to disclose climate-related risks reasonably likely to have a material impact on their business or consolidated financial statements. Proposed Item 1503 would require all companies to disclose the identification and management of climate-related risks, including disclosing the processes surrounding identifying risks and the management and integration of climate risks into the company’s overall risk management system. Collectively, these requirements go far beyond traditional notions of materiality and would be unduly intrusive into the internal processes of public companies.

While INGAA’s members support transparency, the proposed requirements cover a great deal of information that most public companies are not voluntarily disclosing—and for good reason.⁶⁹ Climate-related evaluations and metrics are new, and companies are still experimenting with the evolving metrics that are constantly being honed to assess and address climate-related issues. Similarly, many INGAA members are still building internal systems in response to this new data and finding the best way for their respective organizations to meet the developing needs in this space. Our collective experience with voluntary programs to address our GHG emissions has taught us the importance of flexibility and experimentation in responding to these challenges.

Requiring companies to make public disclosures around these issues—particularly in a context like an SEC filing which is filled with potential legal liability risks and attention from a myriad of other outside stakeholders—will necessarily chill internal conversations about how to best address climate-related issues and slow the organic improvements our members are already making on these issues. Specifically, when companies know that any internal considerations or

⁶⁹ According to the TCFD 2021 Status Report, governance disclosures are among the least reported voluntary disclosures. In 2020, only 20% of companies in North America that issued voluntary reports under the TCFD framework included disclosures on the board’s oversight of climate risks and 11% included disclosures of management’s oversight of climate risks. TCFD 2021 STATUS REPORT, *supra* note 21, at 35. In 2020, for risk management disclosures — such as those in Item 1503 of the Proposed Rule — 17% of North American reporters included disclosure on risk identification and assessment, 19% included disclosure on risk management processes, and 18% included disclosure on the integration of these risks into the company’s overall risk management. *Id.*

changes in policy will be subject to disclosure requirements, they will necessarily become more cautious and scripted in discussing these issues.

While these concerns apply to all of the prescriptive disclosure requirements around the governance and internal decision-making of our members, INGAA is particularly concerned with the requirement to disclose any specific internal carbon price our members may use, as well as the use of scenario analysis.⁷⁰

INGAA members are subject to requirements and review by a number of federal regulators who have used a variety of metrics including the social cost of carbon or social cost of GHGs to evaluate their own actions. At times, there have been pushes for members of our industry to use similar metrics. The current “price” of emissions under these various metrics has been the source of active, heated, and ongoing debate.⁷¹ INGAA respectfully submits that the Commission should not prescribe a methodology for an internal carbon price before this public debate has had a chance to run its course, let alone require disclosure of a price. We do not believe disclosing a specific price adds value to what would already be qualitatively discussed as a climate risk. It could, however, have unintended consequences, especially when coupled with the requirement to disclose Scope 3 emissions. For example, if internal pricing is different than any nationally-adopted carbon pricing, that could potentially lead to forced reconciliation and project / initiative evaluation changes. Moreover, forcing registrants to disclose internal carbon measures will likely have a significant chilling effect by discouraging from registrants to develop those measures in the first place, lest they be forced to publicly disclose them before being sure that they are reasonably accurate and provide useful information.

The Proposed Rule would also require disclosure of members’ use of climate risk scenario analysis.⁷² A registrant would be required to “disclose the scenarios considered (*e.g.*, an increase of no greater than 3°C, 2°C, or 1.5°C above pre-industrial levels), including parameters, assumptions, and analytical choices and the projected principal financial impacts on the registrant’s business strategy under each scenario.”⁷³ The Commission asked for comment on whether these requirements would disincentivize the use of analytical tools and, if so, how to address this challenge.⁷⁴ INGAA believes this disclosure requirement would disincentivize registrants from adopting scenario analyses if they have not already done so. In order to encourage registrants to adopt such analyses, the Commission should remove any disclosure requirements. Alternatively, if disclosure of climate scenario analyses is included in any final rule, then the Commission should do so with a phase-in period. Under this approach, the registrant would initially only need to disclose the fact that it has conducted such an analysis. If the registrant continues with climate scenario analysis then it should subsequently report on any material results

⁷⁰ See Proposed Rule, 87 Fed. Reg. at 21,467 (proposed 17 C.F.R. §§ 1502(e)(1)–(3)).

⁷¹ See, *e.g.*, *Louisiana ex rel. Landry v. Biden*, No. 22-30087, 2022 WL 866282 (5th Cir. Mar. 16, 2022) (granting stay of district court’s preliminary injunction against the federal government’s use of Interim Estimates of the social cost of greenhouse gas emissions in agency action), *motion to vacate stay denied*, 2022 WL 1671759 (U.S. May 26, 2022).

⁷² Proposed § 229.1502(f).

⁷³ *Id.*

⁷⁴ See 87 Fed. Reg. at 21,358.

under the Commission’s traditional approach to principles-based materiality. This approach gives registrants the ability to try climate scenario analysis and assess its results before providing detailed disclosures. The approach also gives registrants the time to assess the materiality of any climate risks identified.

In order to address these concerns, the Commission should:

1. Remove the specific prescriptive requirements for disclosure of internal decision-making processes and metrics and instead rely on traditional disclosure of principles-based materiality.
2. If the final rule retains the specific prescriptive requirements, the Commission should require disclosure only when a company has otherwise publicly disclosed such metrics, and only to the extent they have done so without additional information about internal processes or decision-making, allowing for references to the location of such information.
3. If the final rule retains disclosure requirements for scenario analysis, it should also provide a phase-in for the disclosure.

VI. Application to Foreign Filers

The SEC’s proposed climate-related disclosure rules would apply to foreign issuers to the same extent as domestic issuers. The SEC noted in the Proposed Rule that it has not proposed to amend Form 40-F, which is the annual report form used by Canadian issuers eligible to use MJDS and generally allows such Canadian issuers to report following Canadian public company disclosure requirements. The SEC requested comments on whether the Proposed Rule should apply to issuers reporting on Form 40-F. INGAA supports allowing Canadian issuers to comply with Canadian climate-related disclosure requirements instead of the Proposed Rules consistent with the SEC’s approach to Subpart 1200 and Subpart 1300 disclosures for Canadian issuers reporting under MJDS and does not think that Form 40-F should be amended.

CONCLUSION

INGAA’s members have dedicated significant resources to voluntary measures to address climate change through reducing GHG emissions associated with their operations and will continue to do so. INGAA’s members also support the goal of transparency, and the Commission’s stated goals of providing “consistent, comparable, and reliable—and therefore decision-useful—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments.”⁷⁵ A number of provisions in the Proposed Rule, however, will not further these objectives and indeed may be counterproductive as well as impractical for members to implement.

INGAA notes that this Proposed Rule is premature. Many regulatory standards are based on consensus standards, which need time to develop. Right now, there are no consensus standards

⁷⁵ Proposed Rule, 87 Fed. Reg. at 21,335.

for climate-related disclosures. Instead, there are a number of competing disclosure frameworks, each of which are still evolving.⁷⁶ As previously noted, INGAA's members participate in a number of these frameworks, but most members do not disclose all of the possible information that could be provided under each framework. And these frameworks are themselves continuing to develop. Rather than create a prescriptive disclosure regime at this time, the Commission should continue to use a principles-based materiality approach and allow companies to report material climate-related information (as many already do in response to investor requests) until consensus-based standards have developed.

To the extent the Commission does move forward with a final rule along the lines proposed in the Proposed Rule, INGAA hopes that it will consider and adopt the recommendations proposed here.

Regards,

/s/ Amy Andryszak

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⁷⁶ For the interstate natural gas pipeline industry, this rule is particularly premature as there are currently several proposed rules from other regulators that impact GHG emissions, as well as evolving technology and regulatory rate schemes, which will likely have an impact on GHG emissions and infrastructure siting.