



June 17, 2022

Submitted Electronically

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

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

Dear Ms. Countryman:

Energy Transfer LP (“Energy Transfer”) welcomes the opportunity to submit these comments to the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) in response to the proposed *Enhancement and Standardization of Climate-Related Disclosures for Investors* (Release Nos. 33-11042; 34-94478; File No. S7-10-22) (“Proposed Rule”).¹

Energy Transfer’s dedication to environmental stewardship is woven into all aspects of our business. We recognize the importance of healthy and diverse ecosystems and the role they play in our quality of life. From design and construction of our assets, to restoration and operation, we are dedicated to protecting the environment around us and ensuring its long-term integrity for future generations. While Energy Transfer is supportive of providing investors with information that is meaningful to evaluating our business and operations from an investment perspective, we do not believe that the Proposed Rule satisfies this objective. Specifically, we are concerned that the Proposed Rule:

- Departs from the Commission’s traditional principles-based approach to materiality to the detriment of investors and registrants alike;
- Is beyond the Commission’s statutory authority and is being promulgated in a way that does not comply with the procedural requirements of the Administrative Procedure Act (“APA”);
- Mandates disclosure of greenhouse gas (“GHG”) emissions and other climate-related data in forms that are not useful to investors and not feasible for public companies;
- Includes unworkable timelines that underappreciate the work necessary to implement the requirements; and
- Interferes with registrants’ ability to effectively prioritize their own business considerations to the detriment of shareholders and unitholders.

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

Overall, we believe the SEC has not fully grappled with the many practical implementation challenges that will result from the sweeping and prescriptive requirements in the Proposed Rule, and we write to share examples of those concerns as they relate to Energy Transfer's operations.

I. Overview of Energy Transfer's Operations

Energy Transfer, a large accelerated filer, has one of the largest energy portfolios in America, with assets in 41 states. Much of Energy Transfer's business consists of natural gas operations, including gathering, processing, transportation and storage. Energy Transfer also provides transportation, terminalling, acquisition, and marketing services with respect to crude oil, natural gas liquids ("NGLs"), and refined products. In addition, Energy Transfer owns investments in other businesses, including Sunoco LP ("Sunoco") and USA Compression Partners, LP ("USAC"), which are publicly traded limited partnerships. Because the details of our diverse and extensive operations are critical context for our comments, we provide below a brief overview of the most significant segments of our business.

Intrastate Transportation and Storage. Energy Transfer operates one of the largest intrastate pipeline systems in the United States, providing logistics to major trading hubs and industrial consumption areas throughout the nation. Energy Transfer owns and operates (through wholly owned subsidiaries or through joint venture interests) approximately 11,600 miles of natural gas transportation pipelines with approximately 24 billion cubic feet per day ("Bcf/d") of transportation capacity, three natural gas storage facilities located in Texas, and two natural gas storage facilities located in Oklahoma.²

Interstate Transportation and Storage. Energy Transfer directly owns and operates approximately 19,830 miles of interstate natural gas pipelines with approximately 18.5 Bcf/d of transportation capacity and another approximately 7,070 miles and 12.0 Bcf/d of transportation capacity through joint venture interests. Energy Transfer's vast interstate natural gas network spans the United States from Florida to California and Texas to Michigan, offering a comprehensive array of pipeline and storage services. One of Energy Transfer's wholly owned subsidiaries—Lake Charles LNG Company, LLC—owns a liquefied natural gas ("LNG") import terminal and regasification facility located on Louisiana's Gulf Coast. Another of our wholly owned subsidiaries—Lake Charles LNG Export Company, LLC—is developing a natural gas liquefaction project at the site of our Lake Charles LNG import terminal and regasification facility.

Midstream. Our midstream operations focus on gathering, compression, treating, blending, and processing. Many of our midstream assets are integrated with our intrastate

² Natural gas transportation pipelines receive natural gas from other mainline transportation pipelines, storage facilities and gathering systems and deliver the natural gas to industrial end-users, storage facilities, utilities, power generators and other third-party pipelines.

transportation and storage assets. Energy Transfer owns and operates natural gas gathering and NGL pipelines, natural gas processing plants, natural gas treating facilities, and natural gas conditioning facilities with an aggregate processing capacity of approximately 11.2 Bcf/d.

NGL and Refined Products Transportation and Services. Energy Transfer's NGL operations transport, store, and execute acquisition and marketing activities utilizing a complementary network of pipelines, storage and blending facilities, and strategic off-take locations that provide access to multiple NGL markets. Energy Transfer's NGL and refined products transportation and services segment includes approximately 5,215 miles of NGL pipelines. Energy Transfer also has a substantial NGL terminalling business with significant NGL storage capacity. These operations also support our liquids blending activities. Refined products operations provide transportation and terminalling services through the use of approximately 3,595 miles of refined products pipelines and 37 active refined products marketing terminals.

Crude Oil Transportation and Services. Energy Transfer's crude oil operations provide transportation (via pipeline and trucking), terminalling, and acquisition and marketing services to crude oil markets throughout the southwest, midwest, northwestern and northeastern United States. Through our crude oil transportation and services segment, Energy Transfer owns and operates (through wholly owned subsidiaries or joint venture interests) approximately 11,315 miles of crude oil trunk and gathering pipelines in the United States. Our crude oil terminalling services operate with an aggregate storage capacity of approximately 66 million barrels. Energy Transfer also engages in a wide variety of crude oil acquisition and marketing activities.

Other investments. Energy Transfer owns investments in Sunoco (which distributes motor fuels to independent dealers, distributors, and other commercial customers) and in USAC (which provides natural gas compression services throughout the United States).

II. The Commission Should Return to Standards Governed by Principles-based Materiality.

Energy Transfer supports engaging with investors on relevant climate-related risks, and believes that long-term value creation should inform and drive our environmental, social, and governance efforts. We do not believe that the SEC's Proposed Rule will enhance the information already being provided to stakeholders. The disclosures contemplated by the Proposed Rule will inundate investors with granular, non-material information that is not tailored to the registrant's particular business and the sheer volume of which will make an investor's fact-finding exercise even more difficult.³ Put simply, these disclosures will

³ As further explained in Section III of this letter, Energy Transfer notes that in some places in the Proposed Rule, the Commission appears to be adopting a new or different definition of "materiality" in the Proposed Rule than the standard that has traditionally been used under securities law, and in other places appears to be requiring non-material information.

“accomplish more harm than good” and “simply . . . bury the shareholders in an avalanche of trivial information . . . that is hardly conducive to informed decisionmaking.”⁴

Given Energy Transfer’s size and the diversity of its business operations and the geographic locations of its assets, much of the information that would be required under the Proposed Rule is simply not material to its operations or useful to its investors. Energy Transfer already discloses material climate-related risk information in its securities filings, as required under existing SEC rules. Energy Transfer also provides climate-related information through voluntary disclosures. For example, we communicate with investors on a range of environmental, social, and governance (“ESG”) issues (including climate) in our Corporate Responsibility Report, and we report climate-related information on a voluntary basis on our website utilizing the Energy Infrastructure Council’s (“EIC”)/GPA Midstream ESG disclosure template. As detailed in the EIC’s June 2021 Comment Letter to the Commission, this template was developed by EIC in collaboration with investors who have extensive knowledge of midstream energy businesses and, based on input from these investors as well as a number of midstream companies, the template has been designed to focus on the information that EIC and these constituents deem most relevant to investors. Energy Transfer believes that voluntary reporting, outside of the context of an SEC filing, is the more appropriate place for companies to disclose climate-related information for those investors particularly interested in these issues.

Energy Transfer recognizes that this may not hold true for all registrants: Not all public companies are as large or diverse as Energy Transfer, and some may have limited assets that are particularly vulnerable to the physical risks associated with climate change. Some may have specific lines of business that may be significantly impacted by climate-related issues. But this is exactly why the Commission should **not** adopt a prescriptive one-size-fits-all requirement. Instead, the Commission should, as it historically has, allow public companies to disclose those risks that are truly material to their specific circumstances under a principles-based materiality standard. This approach is far more likely to result in investors receiving “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”⁵ because it will allow registrants to tailor their disclosures to those issues that are truly material to their businesses. By contrast, the detailed and prescriptive requirements in the Proposed Rule would blur the distinction between material information and non-material information as it relates to Energy Transfer’s business strategy and risk management, and will distract investors from the information that is actually material to their investment decisions. The requirements will also overwhelm investors with information on one particular topic, to the detriment of their ability to synthesize the other, truly material, information in a registrant’s disclosures. For example, due in part to its size and diversity of operations, Energy Transfer’s last Form 10-K spanned 251 pages and covered a wealth of topics, including no less than seven

⁴ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976).

⁵ 87 Fed. Reg. at 21,335.

pages of disclosure of “Environmental Matters” such as endangered species, air emissions, clean water, and three risk factors dedicated to climate change and related topics.

At the same time that the proposed requirements detract from providing investors with truly material information, they also risk burdening registrants with cumbersome disclosure requirements and exposing them to unnecessary liability for matters that are not material (as that term has historically been applied to Regulations S-K and S-X). Energy Transfer therefore encourages the SEC to return to a principles-based disclosure approach that is centered on materiality. In lieu of adopting a one-size-fits-all framework for climate-related disclosures, the SEC should allow registrants to make focused and company-specific disclosures, while permitting appropriate flexibility to ensure that disclosures truly promote the public’s ability to make informed decisions about investment and voting. This will result in a better outcome for investors and registrants alike. We support the comments to the Proposed Rule submitted by the EIC regarding adoption of a principles-based materiality approach, and we incorporate those comments into this comment letter by reference.

III. The Proposed Rule Has a Number of Procedural Deficiencies.

In addition to the practical and policy objections described above, Energy Transfer has a number of legal and procedural concerns with SEC’s proposal, which are outlined below. The Proposed Rule asserts that the SEC has extremely “broad authority to promulgate disclosure requirements that are ‘necessary or appropriate in the public interest or for the protection of investors.’”⁶ Other commenters have noted that the understanding of the Commission’s authority underlying the Proposed Rule raises a number of significant and troubling legal issues. We agree that these substantive legal questions raise serious issues that deserve the Commission’s attention.⁷ Among other legal issues, Energy Transfer believes that the Commission has failed to satisfy its obligation to comply with basic procedural protections afforded to stakeholders and the public by the Administrative Procedure Act (“APA”) in at least four ways: (i) failing to clearly articulate the legal basis for the Proposed Rule; (ii) radically departing from agency precedent with insufficient explanation or justification; (iii) relying on factors Congress did not intend for the Commission to consider when developing the Proposed Rule; and (iv) depriving registrants of due process to which they are entitled.

The APA provides that federal courts must set aside agency actions that are arbitrary or capricious, that were made “without observance of procedure required by law,” that are “unsupported by substantial evidence,” or that are “otherwise not in accordance with law.”⁸ The Supreme Court has interpreted these provisions to mean that, as a matter of procedure, an agency must supply a clear and reasoned basis for its decision, including an explanation of the legal

⁶ Proposed Rule, 87 Fed. Reg. at 21,335 (quoting 15 U.S.C. § 77g) (citing *id.* §§ 78l, 78m, 78o).

⁷ See, e.g., EIC Comment Letter; Texas Pipeline Association (“TPA”) Comment Letter.

⁸ 5 U.S.C. § 706(2).

authority under which it is acting.⁹ In so doing, the agency may not “fail[] to consider an important aspect of the problem” or “rel[y] on factors which Congress has not intended it to consider.”¹⁰ Moreover, an agency cannot depart from its prior policies without both (1) “display[ing] awareness that it is changing position” and (2) providing “good reasons for the new policy.”¹¹ In addition, the Commission cannot offer “an explanation for its decision that runs counter to the evidence before the agency” and its findings must be supported by “substantial evidence on the record considered as a whole.”¹²

Failure to Clearly Articulate the Legal Basis for the Rule. The Proposed Rule fails to provide a cogent explanation of the legal authorities on which it purports to be based. Stakeholders expect—and the law requires—that a rulemaking as far-reaching as the Proposed Rule would contain a careful and lengthy explication of the Commission’s statutory authority, and a clear account of how the proposed action fits within the bounds of the power that Congress conferred to the Commission. Yet the Proposed Rule contains very little in the vein of a detailed and reasoned explanation of how the Commission’s actions fit within the boundaries of its authority. Beyond a handful of sentences suggesting that the Commission has “broad authority” to protect investors¹³ and a few platitudes concerning the Commission’s belief that the new disclosure regime is consistent with the public interest,¹⁴ the Proposed Rule says little about the SEC’s precise legal mandate to implement the disclosure regime outlined in the proposal.

What little the Proposed Rule does offer in the way of discussion is confusing, difficult to parse, and at times internally inconsistent. For example, it is not clear whether the Commission believes that the climate-related disclosures it proposes to require from issuers are justified because these disclosures (1) relate to information that **is** material to investors but was not previously being recognized as material or (2) because these disclosures relate to information that **is not** material, but that investors nonetheless purportedly “need” to have in the interests of protecting the public. Is the Commission suggesting that climate-related information is “material” in the traditional regulatory sense of that term, or that the threats posed by climate change are so extensive that nearly all climate-related information is material, or that it views any classes of information demanded by investors as necessarily material, or that its authority to protect investors and the public allows it to compel disclosure of concededly non-material information? The Commission’s failure to cogently “show its work” and explain the bases for its authority evidences the fact that the Commission has not yet considered all aspects of the

⁹ See *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947); see also *Johnson v. Copyright Royalty Bd.*, 969 F.3d 363, 392 (D.C. Cir. 2020) (finding agency action arbitrary due to the agency’s “fail[ure] to identify any legal authority for adopting” its position).

¹⁰ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹¹ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis omitted).

¹² *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (citation omitted).

¹³ See, e.g., Proposed Rule, 87 Fed. Reg. at 21,335.

¹⁴ *Id.* at 21,335, 21,340 & n.51.

“problem” it hopes to solve, and makes it difficult for members of the public to meaningfully comment on the SEC’s proposal.

Unacknowledged and Unexplained Departures from Prior Policy. The Proposed Rule is procedurally deficient because the Commission is now adopting a dramatically different interpretation of its statutory authority than it has advanced in the past, without even acknowledging, let alone justifying, its significant departure from precedent. For example, many commenters—including Energy Transfer as noted above—are concerned that the Commission appears to be revising its traditional understanding of the notion of “materiality.” The United States Supreme Court has long understood that the notion of “materiality” (in the context of the securities laws) depends on whether there is “a substantial likelihood that a reasonable shareholder would consider” the information in question to be “important.”¹⁵ For decades, the SEC’s Orders have reflected and embraced the same concept of “materiality.”¹⁶ But the Proposed Rule approaches materiality in a very different way—and does so without explanation. To name just one example, the Proposed Rule expressly states that Scope 3 emissions may be “material” merely because they are relatively large when compared to Scope 1 and 2 emissions,¹⁷ which upends traditional notions of materiality because Scope 3 emissions could easily be both (1) large for a certain issuer in relative terms but yet (2) still not “important” in the investment and voting decisions of a reasonable shareholder or unitholder.

The Commission adopts approaches to other critical issues that differ from its own prior reasoning on those exact topics. For example, as other commenters have correctly explained, the Proposed Rule’s suggestion that management should consider the magnitude and probability of particular risks over various time horizons¹⁸ embraces the exact type of “probability/magnitude” test for materiality that the Commission itself rejected in a 1989 guidance document¹⁹ and in a 2020 Release.²⁰ And with respect to enhanced financial statement disclosures, the Commission has elected to craft new substantive accounting standards in the proposed Article 14 of Regulation S-X, in contravention of its usual practice of allowing the Financial Accounting Standards Board to develop such standards. Yet the Commission gave no explanation as to why.

¹⁵ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *accord Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

¹⁶ *See, e.g., In re Thomas A. Sartain, Sr., Exchange Act Release No. 16561*, 1980 WL 29510, at *3 n.10 (SEC Feb. 8, 1980); *In re the BFGoodrich Co., Exchange Act Release No. 22792*, 1986 WL 626330, at *4 n.4 (SEC Jan. 15, 1986).

¹⁷ *See Proposed Rule*, 87 Fed. Reg. at 21,378, 21,377.

¹⁸ *See id.* at 21,352.

¹⁹ *Management’s Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, Release No. 33-6835, § 3.D n.27 (1989), <https://bit.ly/3NufGro>.

²⁰ *Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, Release No. 33-10890 (2020), <https://bit.ly/3MKfGDG>.

In still other portions of the Proposed Rule, the Commission creates new disclosure requirements without even attempting to suggest that the relevant information would be “material.”²¹ For example, the Proposed Rule requires reporting of Scope 1 and 2 emissions, without supporting arguments that those emissions will always be material. Similarly, the Proposed Rule requires Scope 3 reporting if either (1) the Scope 3 emissions are material **or** (2) the registrant has set a reduction target that includes Scope 3 emissions.²² By including the separate, latter category, the Commission is implicitly acknowledging that there will be times when the Proposed Rule would require the disclosure of Scope 3 emissions even when they are **not** material. Other examples of information that issuers will be required to disclose without regard to materiality include the existence of an internal carbon price (Item 1502(e)), the use and results of climate scenario analysis (Item 1502(f)), the processes the issuer has for identifying climate-related risks (Item 1503(a)), and the role that carbon offsets or renewable energy credits play in the registrant’s climate-related business strategy (Item 1502(c)).

Perhaps most remarkably, the Proposed Rule would require that registrants report the impact of climate-related events and transition activities in each line item of their financial statements, unless the impact of those events and activities is less than one percent of the aggregated line item.²³ That requirement cannot be squared with traditional quantitative measures of materiality, because no reasonable investor would consider all information required to be reported under this rule to be “important.” On the contrary, any reasonable investor would prefer that the company not be shackled with the burden of directing zero-sum resources away from the core business and towards form-above-function compliance efforts.

These new disclosure requirements—which appear to rest on the notion that the Commission can require whatever disclosures it believes are necessary to promote “transparency,” regardless of whether the information is material—signal a sea change in the way that the Commission approaches its power to compel disclosures.

Reliance on Factors that Congress Did Not Intend for the SEC to Consider. The Commission has erred by considering factors beyond those that Congress instructed it to consider.²⁴ For example, the Proposed Rule repeatedly suggests that various disclosures should be required because they implicate “decision-useful” information. But, as other commenters have correctly explained, Congress intended that “decision-useful” information would be limited to **financial** information—not **all** types of information, such as information about GHG emissions. Because the SEC’s power to compel disclosures properly is limited to financial

²¹ See Proposed Rule, 87 Fed. Reg. at 21,368 (explaining that “the proposed climate-related financial statement metrics” will be required because they “should provide additional transparency into the impact of climate-related events . . . that would be relevant to investors when making investment or voting decisions,” without suggesting that this information will always be “material”).

²² *Id.* at 21,345.

²³ *Id.* at 21,432.

²⁴ See *supra* note 10 and accompanying text.

information,²⁵ its conclusion that the disclosures in the Proposed Rule are necessary to supply the investing public with certain non-financial information evinces the fact that the Commission has considered factors exogenous to those Congress instructed it to account for, in violation of the APA and the Supreme Court’s opinion in *Motor Vehicle Manufacturers Association of the U.S., Inc. v. State Farm Mutual Automobile Insurance Co.*²⁶

Decision that Runs Counter to the Evidence Before the Commission. While it is impossible to know until the comment period closes whether there is “substantial evidence on the record considered as a whole”²⁷ to support the Proposed Rule, it is unlikely that there will be sufficient support to demonstrate that many of the specific, granular, and prescriptive climate-related disclosures mandated by the Commission are “material” as the term has been interpreted under binding Supreme Court precedent.

Due Process. Energy Transfer believes that the Proposed Rule, if finalized in its current form, would present serious due process concerns. As explained below, certain of the disclosures required by the Proposed Rule—especially the Scope 3 disclosures—would appear to require many issuers to make disclosures that both they and the Commission know are not being tendered with the same level of particularity and certainty that would normally accompany SEC filings. Indeed, the Commission recognized in its discussion of Scope 3 disclosures that issuers would have to guess at certain emissions figures because, “in many instances, direct measurement of GHG emissions at the source, which would provide the most accurate measurement, may not be possible.”²⁸ Energy Transfer is concerned that if the Commission forces issuers to make disclosures that cannot be offered with the normal degree of certainty, the Commission will be recklessly exposing registrants to enhanced shareholder litigation risk. In effect, the Commission is needlessly exposing issuers to enormous and unnecessary securities fraud risks, for no good reason. It appears the Commission has not fully grappled with the nature of these impacts.

Energy Transfer appreciates that there are significant and competing demands on the Commission’s time, and that many stakeholders and politicians are eager to see the Proposed Rule finalized. Energy Transfer is also mindful that election cycles and the desire to defend any final rule in court can influence the timelines for moving to propose and finalize regulations on aggressive timelines. Last year, the Commission requested comments about how to integrate climate into its integrated disclosure system, resulting in a proceeding in which the Commission received a large number of comment letters. That proceeding built in part on the Commission’s 2010 efforts to provide additional climate-related guidance to issuers. The Commission’s Proposed Rule is the most recent chapter in this saga. The Proposed Rule came close on the

²⁵ Cf. *Nat. Res. Def. Council, Inc. v. SEC*, 606 F.2d 1031, 1039 (D.C. Cir. 1979) (“[T]hese laws, in the Commission’s view, were designed generally to require disclosure of financial information in the narrow sense only.”).

²⁶ 463 U.S. 29.

²⁷ *Id.* at 44 (citation omitted).

²⁸ Proposed Rule, 87 Fed. Reg. at 21,387.

heels of the prior comment proceeding, and Energy Transfer respectfully submits that it does not appear that the Commission truly conducted an appropriate investigation before concluding that principles-based materiality would not supply an appropriate framework through which registrants can make climate-related disclosures on a going-forward basis. It appears to Energy Transfer that the Commission and the public would be better served if the Commission were to take additional time to consider stakeholder input and think closely about whether a rulemaking is truly warranted, instead of racing ahead with a proposal that—while lengthy—fails to clearly explain the basis for the Commission’s action.

Energy Transfer therefore recommends that the Commission adhere to its traditional principles-based materiality approach regarding climate disclosures, rather than finalize the Proposed Rule in its current form. For any final rule the Commission does finalize, Energy Transfer asks that the Commission first address the substantive and procedural concerns outlined above.

IV. The Commission Should Remove or Revise the GHG Reporting Requirements.

Under the Proposed Rule, Energy Transfer will be required to disclose its “Scope 1” emissions (i.e., direct emissions from operations owned or controlled by the company); its “Scope 2” emissions (i.e., indirect emissions from the generation of purchased or acquired electricity); and its “Scope 3” emissions (i.e., the emissions from other activities in the company’s value chain), to the extent that the Scope 3 emissions are “material” or if it has set an emissions goal that includes Scope 3 emissions.²⁹ While Energy Transfer understands that GHG emission management is increasingly a topic of interest for some investors, the Proposed Rule requires the disclosure of significant detailed information that will be of little practical use to the average investor. It appears that the underlying impetus behind the reporting of GHG emissions is to ensure that companies are “transitioning” away from fossil fuel energy sources in favor of renewable sources. But encouraging this transition is not within the Commission’s core mandate, and even if it was, the Commission does not have the internal expertise necessary to promote this policy goal, particularly when it comes to the complex methodologies used to calculate GHG emissions. As explained in detail below, Energy Transfer encourages the Commission to fundamentally rethink the Proposed Rule’s approach to these disclosures. While the Scope 3 emission requirements pose the greatest concerns for registrants and investors alike (*see infra* Section IV.A), Energy Transfer also has a number of concerns with the proposed disclosure requirements for Scope 1 and 2 emissions (*see infra* Section IV.B).

GHG emissions disclosures do not provide meaningful and useful information to the average investor. GHG emissions tracking and reporting is only important as it relates to the contribution to climate change—a global phenomenon influenced by many factors. As the Commission’s identification of both “physical” and “transition” risks indicates, climate change considerations (insofar as an investor is concerned) includes natural factors, domestic policy

²⁹ *See* Proposed Rule, 87 Fed. Reg. at 21,378, 21,377.

considerations, and international aspects, such as the contributions and policies in foreign nations that are far outside the control of any individual company.

Even if a company could predict and account for these complex factors, GHG emissions reporting would not meaningfully inform investors of a company's progress toward climate-change mitigation or climate change resilience. Ironically, it is those companies responsible for the infrastructure and energy required to implement mitigation and resilience measures that will necessarily have greater GHG emissions. Yet these same companies in the manufacturing, construction, and energy space provide the most "value" when considering what is needed for implementation of climate mitigation and resilience. This means that their services will be even more critical as a result of climate change. In addition, the GHG emissions disclosures in the Proposed Rule will lack context: GHG reporting has less meaning without reference to reduction goals and targets, such as net-zero. But because there is currently no universal net-zero framework or standard, such standards are inappropriate for inclusion in an SEC filing. As a result, the current approach under which companies make voluntary emissions disclosures in the context of broader sustainability reporting is far more useful to the investors interested in such issues than the approach mandated by the Commission. These voluntary disclosure regimes allow the time and space necessary for these standards to evolve and organically adjust to investor needs, while the Proposed Rule would ossify the requirements before they have had time to fully develop.

As a result, even if climate-related issues impact a company more broadly, whether a company has a high or a low GHG emissions count does not directly relate to the overall value of the company or, indeed, its operational risks. Put simply, GHG emissions do not indicate the future value of a company. Given the significant variability of each individual company's size and complexity, benchmarking emissions across sectors, and even company-to-company within a sector, is not meaningful to investors. Instead it will create an additional empty metric likely to mislead investors as they try to compare the data across companies.

A. Scope 3 Emissions

Energy Transfer recommends that the Commission remove any requirement to disclose Scope 3 emissions. Scope 3 emissions are inherently subject to uncertainty, and the Proposed Rule will not provide sufficient uniformity or consistency to inform investor decisions in a meaningful manner. While Energy Transfer believes all registrants will struggle with disclosing Scope 3 emissions for similar reasons, we have provided examples specific to our business that highlight how unworkable and arbitrary the proposed disclosures would be. As applied to our business, Scope 3 emissions disclosures will be rendered meaningless due to: (i) data gaps that we cannot remedy; (ii) unsettled standards that will prevent consistency between disclosures; and (iii) arbitrary distinctions in how emissions are calculated.

i. Data gaps

First, the collection and quality of Scope 3 emissions data are significant roadblocks to providing investors with meaningful information. As described in the attached report prepared by SLR International Corporation—an environmental consultancy experienced in the calculation of GHG emissions from the oil and gas industry—if the Commission were to use a Scope 3 definition that deviates from the GHG Protocol and required companies like Energy Transfer to account for the upstream and downstream emissions of the products that it transports, stores, or processes, it would be virtually impossible for Energy Transfer to generate accurate Scope 3 downstream or upstream-emissions estimates. Although Energy Transfer may have information about the volume of hydrocarbons transported on or stored in its systems, it will often lack particularized information about where the hydrocarbons it is transporting originally came from or are ultimately going to.

Because hydrocarbons are fungible commodities, it will not always be possible for us to know who produced (in other words, pumped out of the ground) those particular molecules that we transport. They may have been bought and sold multiple times before they reach us. They may have been stored and comingled with gas from other shippers from other regions. They may reach us through interconnected pipes within the midstream system that make it impossible to identify where they came from. As a result, Energy Transfer does not have a third-party in our value chain that we turn to for the information we would need to calculate the emissions associated with their production. And we may, at best, have some sense of the general region that the hydrocarbons came from, but this information alone will not be sufficient to accurately determine the GHG emissions associated with those products “upstream” of our transportation services. Indeed, the Product Carbon Footprint, which is a “cradle-to-gate” emission factor for a particular hydrocarbon, will be different depending on the delivery point of the hydrocarbon within the pipeline system. On an interstate pipeline, there may be many delivery points along the system. And pipelines use facilities known as compressor stations to assist the flow of the product further down the pipeline. Compressor stations can be fueled using natural gas from the system, or from electricity. A delivery point closer to the beginning of the pipeline would not account for emissions associated with a compressor station that is downstream, but a delivery point downstream of the compressor station would need to account for those emissions. Considering the number of delivery points that Energy Transfer has along its systems, it may not be possible, or at the very least would require a significant amount of time and effort to provide the Product Carbon Footprint for each delivery point.

This doesn’t just create a problem for us: any public companies who ship on our systems or otherwise consider us part of their “value chain” will also struggle to estimate the Scope 3 emissions associated with the product they bought or sold. So too will our competitors and the members of *their* value chains. Even if we do our best to try to determine this information for those companies (and take on the additional cost and expense of doing so, and accept whatever impact it will have on both our business and investors), we won’t have the information to always do so accurately. And so these issues of data-uncertainty will cascade up and down the value

chain, resulting in *more* companies reporting inconsistent and unreliable information to investors.

The fungible nature of the hydrocarbons we transport also means that not all hydrocarbons that travel on our pipeline systems are routed to an identifiable end user or end use. For example, when a producer injects natural gas into an Energy Transfer gathering and processing system, the producer will rarely if ever receive the same molecules of natural gas at the redelivery point. And it is not the case that all hydrocarbons which travel on Energy Transfer's systems will ultimately be combusted. For example, the natural gas we transport may be used as an input for industrial or manufacturing processes, including the production of fertilizer, ammonia, and hydrogen. Much of the gas transported on Energy Transfer's intrastate systems is ultimately sold to industrial customers on the Gulf Coast. 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, there is less predictability with respect to industrial end users, whose GHG outputs can vary widely based on a large number of factors, many of which are unknowable to Energy Transfer.

Similarly, NGLs may also be sold as industrial feedstocks which ultimately are used to produce chemicals for use in a variety of consumer products, such as plastics, detergents, paints, solvents, synthetic fibers and medical products. These various downstream uses of products that Energy Transfer transports have substantially different GHG emissions profiles and are typically at least four transactions downstream of our sale and any molecule could have gone any direction. About two thirds of the NGLs transported by Energy Transfer and its subsidiaries are ultimately exported, and Energy Transfer does not have transparency to know how those NGLs will be used in the receiving nation. NGLs may be used for cooking, for fuel (both domestic with no controls and industrial with controls), or as inputs to processing or chemical plants (some in countries with little or no controls and others in countries with tight emissions standards) to make thousands of consumer products, with each use having a dramatically different GHG profile. Energy Transfer conveys title of our product as it crosses the flange of the vessel and at that point we lose sight of it . . . we neither control the ultimate destination nor the use of such NGL once it leaves our facilities. There are also frequent cases where vessels are diverted or sold "on the water" to a new country/location/user and there is no means for an original seller such as Energy Transfer to be aware of that transaction, and certainly cannot, as the Commission suggests, "influence those activities."³⁰

In fact, Energy Transfer has almost no ability to even accurately track such information: Without ever leaving the same tanker, the NGLs within a ship may be bought and sold multiple times at sea before ever reaching their final destination, and Energy Transfer has no way of knowing when such trades occur or where the product will ultimately end up. Often, we will not even know the destination **country**, let alone **specific end use or users** of the product once it leaves our facilities. How then can we accurately determine the Scope 3 emissions associated

³⁰ Proposed Rule, 87 Fed. Reg. at 21,377.

with these products? From whom would we collect the relevant information? And even assuming we could determine such information, how would it be useful to our investors given that the end use is largely dependent on trades that occur after it has left our control? To give an example of the complexities of these determinations, EPA’s “Emission Factors for Greenhouse Gas Inventories”³¹ outlines different emission factors depending on whether the final source of the fuel-related Scope 3 emissions is an on-road or non-road vehicle, the vehicle type, fuel type, engine type, and/or year of manufacture. Even if Energy Transfer knew that a specific product would be used to fuel vehicles, it is impossible for Energy Transfer to know the specific details about the specific vehicles that will ultimately use its products. Likewise, the EPA guidance provides different emission factors depending on how the product is transported before reaching the vehicle that ultimately combusted the fuel. We might know what form of transportation a product leaves our facility in, but how are we to track what happens to it next? If we do not even know what **country** the product will ultimately end up in, how are we to guess whether it will be subsequently transported by pipeline, rail, or truck?

In addition, the Proposed Rule seems to suggest that we would need to account for **when** the upstream and downstream emissions are realized as the proposal also calls for historic GHG emissions, disclosed by fiscal year. But how can a company like Energy Transfer accurately determine when these emissions are realized? For example, a barrel of crude may be sold in one year, and subsequently stored in another company’s storage tank before being transported to a refiner. The refined products such as gasoline and diesel may then be transported to storage tanks where they will be stored until eventually being transported to a gas station. Are the Scope 3 emissions associated with the final use of the gasoline and diesel included in the year that we sold the crude oil or in a future year when the final product is eventually combusted? What if an individual consumer fills up a spare tank of gasoline and leaves it sitting in their garage? What kind of assumptions and guesses are we supposed to make about these products? And even if we need to include potential forward-looking downstream emissions in current year reporting, there is no guarantee that they will be accurate.

As these examples show, Energy Transfer and many registrants will be powerless to require other entities in their value chain to provide emissions data necessary to determine Scope 3 emissions. This will force companies reporting on Scope 3 emissions to rely on estimated values, which may not accurately capture the full scope of operations within a registrant’s value chain. While it may be possible for companies who sell non-fungible products to a few major customers to determine their Scope 3 emissions, the Proposed Rule does not consider the added challenges for businesses like ours with complex value chains.

The Proposed Rule implicitly recognizes these data gaps by requiring a description of the data sources used to calculate Scope 3 emissions, which includes “[d]ata derived from economic studies, published databases, government statistics, industry associations, or other third-party sources outside of a registrant’s value chain” and information about whether “such

³¹ EPA, *Emission Factors for Greenhouse Gas Inventories* (Apr. 2022), <https://bit.ly/3b4HEfA>.

reports were verified by the registrant or a third party, or unverified.”³² The categories outlined, and the references to “unverified” reports demonstrate the guesswork involved in “calculating” Scope 3 emissions. And ironically, the requirement creates an additional data gap challenge, as companies may not be able to determine the sources of the data that their value chain partners used to calculate emissions.

In further recognition of these data gap concerns, the Commission notes that Securities Act Rule 409 and Exchange Act Rule 12b–21 “provide accommodations for information that is unknown and not reasonably available.”³³ But the problem with disclosure of Scope 3 emissions, as demonstrated by the examples from Energy Transfer’s own operations, is that some amount of the necessary information to accurately disclose such emissions will almost *always* be unknown and not reasonably available. These data gaps and data quality concerns will render the disclosures meaningless for investors and undermine the Commission’s stated goal of ensuring consistency in reporting across issuers.

Estimates concerning Scope 3 emissions are also inherently misleading in the context of the energy-transportation industry because they do not account for the fact that certain commodities transported by Energy Transfer’s pipelines may ultimately displace other fuels, such as coal or heating oil. Indeed, natural gas is used in many areas of the country as a “substitute” for higher-emitting fuels. Energy Transfer operates pipelines that supply feedgas to LNG terminals, and that gas is in turn liquefied and exported internationally, where it frequently substitutes for coal. But as noted above, Energy Transfer has very little ability to determine what specific fuels any particular shipment of product that it processed, transported, or stored actually replaced.

Lest the Commission think that these problems are limited to companies buying, selling, transporting, or storing fungible commodities, we will also provide an example related to business travel, which the Commission has specifically noted to be within Scope 3.³⁴ Companies will face a number of data gaps when they attempt to calculate emissions from business travel, including the fact that employees sometimes book travel outside of the official channels, which makes such travel difficult to internally track. In addition, the official channels often generate reports of bookings, but not necessarily the actual travel if flights are rebooked or canceled or alternative forms of transportation are chosen. And not all travel suppliers (including airlines, car rental agencies, and hotels) are, or are capable of, tracking the GHG emissions associated with the travel. This is particularly true when employees stay at small motels (in some cases family-owned) that they have booked outside of official travel channels. And as one of our travel partners noted, the methodologies for estimating Scope 3 business travel emissions may have wide variations. Some methodologies only evaluate the distance between the origin and destination, while other methodologies incorporate the fuel efficiency of aircraft types, specific

³² Proposed Rule, 87 Fed. Reg. at 21,468-69 (proposed 17 C.F.R. § 229.1504(c)(2)).

³³ 87 Fed. Reg. at 21,391.

³⁴ *Id.* at 21,345.

airline fuel efficiency performance, non-stop flights versus connections, and other variables. As a result, there is no guarantee that when we are collecting emissions from different travel partners that they utilize the same methodology, and we cannot dictate how they calculate their emissions. This means that even within a single company, a registrant may be amalgamating non-comparable travel data. And the issue of non-comparable information will only be made worse when investors attempt to compare these numbers across multiple companies. Setting aside all the complexities, costs, and burdens of calculating Scope 3 emissions from this travel, it is worth asking the more fundamental question: how, at the end of the day, will this information be useful to investors?

ii. Unsettled standards

Second, the standards for calculating Scope 3 emissions are still under development and continue to evolve. The Proposed Rule implicitly recognizes this by requiring the disclosure of calculation methodology in proposed Item 1504(e). Energy Transfer recommends that the Commission wait until greater consensus has coalesced around a particular methodology before requiring Scope 3 disclosures. However, to the extent that the Commission retains a Scope 3 disclosure requirement, Energy Transfer recommends that it follow the GHG Protocol approach.

There are generally four different ways to quantify Scope 3 emissions: (1) supplier-specific or site-specific methods, where GHG emissions data is collected directly from the supplier or the downstream site, along the lines of the Product Carbon Footprint described in the previous section; (2) average-data methods, which involves estimating emissions using a normalized emissions factor along the lines of the EPA guidance described in the previous section. These methods require tracking the various “denominators” and then searching for a relevant emissions factor; (3) spend-based methods, which requires collecting data on the dollars spent and then multiplying those dollars by an emission factor on a per dollar basis; and (4) hybrid methods that are a combination of the first three methods. For some specific categories of emissions there may be category-specific method or methods, which can generally be lumped under “average-data method” or “supplier-specific method,” but are split out for respective categories in the GHG Protocol Technical Guidance.³⁵ Even EPA has not developed average-data (average-product) method emission factors for all Scope 3 categories and for every potential product.³⁶ EPA also offers U.S. Environmentally-Extended Input-Output guidance that can be used with the “average-spend method” for Scope 3 emissions, but the data provided cannot necessarily be used to quantify Scope 3 emissions associated with goods and services originating in a foreign country.³⁷ In sum, there is no generally accepted method of determining Scope 3

³⁵Greenhouse Gas Protocol, *Technical Guidance for Calculating Scope 3 Emissions* (2013), <https://bit.ly/2MqukzV> (“GHG Protocol”).

³⁶ EPA, EPA Center for Corporate Climate Leadership, *Scope 3 Inventory Guidance*, <https://bit.ly/3xs0WmF> (last updated May 12, 2022).

³⁷ See EPA, *US Environmentally-Extended Input-Output (USEEIO) Technical Content*, <https://bit.ly/3xy1ZRU> (last updated on May 5, 2022).

emissions, and there are data gaps and issues with using any of the currently accepted approaches.

None of these methods is foolproof in practice. Take, for example the question of determining Scope 3 emissions when we build a plant. Scope 3 emissions include emissions that are for capital goods and emissions that are for purchased goods and services. The plant will have an engineering, procurement, and construction contractor who handles the design, procurement, and construction of the “capital goods.” This contractor issues thousands of purchase orders for the plant; many of the purchase orders will not be for a single piece of equipment, but are instead for a combination of equipment and services under a lump sum. In addition, this contractor will subcontract with a number of additional entities for both equipment and services, which will again not necessarily be broken out. In these circumstances, it may not be possible to calculate Scope 3 emissions under from the supplier specific method, the average-product method, or the average-spend method.

In addition, under existing international standards it remains unsettled which entities in the oil-and-gas value chain must or should account for combustive emissions as part of their Scope 3 emissions. As a result, even within our particular industry, registrants may use divergent standards to calculate their Scope 3 emissions. To the extent that the SEC believes Scope 3 emissions represent a metric for potential risks related to the transition to a low-carbon economy, the open questions on **how** to calculate Scope 3 emissions will erode any value in mandating that registrants report these emissions. This is yet another reason why the SEC’s proposed approach to reporting Scope 3 emissions would not serve to provide comparable data sets for investors.³⁸

If the Commission elects to retain the Scope 3 reporting requirement, Energy Transfer requests that the Commission clarify its definition of Scope 3 emissions and more closely align it with the GHG Protocol. As explained in Section I above, Energy Transfer’s core business involves the sale of transportation and processing services related to hydrocarbons. With respect to significant segments of its business, Energy Transfer never owns the commodity while it is providing that transportation or storage service. For example, Energy Transfer almost never holds title to either (1) commodities handled as part of its gathering and processing operations or (2) natural gas for which it is providing interstate transportation service. Energy Transfer takes title to gas for which it is providing interstate transportation service only about 15% of the time. With respect to crude oil transport, Energy Transfer takes title only about 20% of the time.

³⁸ See GHG Protocol at 6 (“Use of this standard is intended to enable comparisons of a company’s GHG emissions over time. It is not designed to support comparisons between companies based on their scope 3 emissions. Differences in reported emissions may be a result of differences in inventory methodology or differences in company size or structure. Additional measures are necessary to enable valid comparisons across companies. Such measures include consistency in methodology and data used to calculate the inventory, and reporting of additional information such as intensity ratios or performance metrics.”)

Under the GHG Protocol’s approach to emissions accounting, the upstream emissions from production and downstream emissions from the ultimate combustive use of any such products we transport without owning are **not** part of our Scope 3 emissions; in this circumstance, the “product” that Energy Transfer is providing is a transportation or storage service rather than a commodity, and there can be no emissions from a “sold” product because the product is not Energy Transfer’s to sell.³⁹ Given the significant methodological challenges associated with Scope 3 emissions estimation, the Commission should, at minimum, confirm that it intends for registrants to align with the methodologies of the GHG Protocol or otherwise provide additional clarity regarding covered activities for Scope 3 emissions.

iii. Arbitrary distinctions in calculating Scope 3 emissions

While we firmly believe that emissions from the specific product are outside of Energy Transfer’s Scope 3 emissions in circumstances where Energy Transfer is merely providing a service (such as transportation or storage), this issue highlights the inherently arbitrary nature of determining Scope 3 emissions. Although about 90% of Energy Transfer’s business relates to transportation of hydrocarbons for third parties, the regulatory regimes and on-the-ground practices governing ownership and trading vary significantly from commodity to commodity. In some instances, we may take title to a product while transporting it and then sell it right back to the same party that originally owned it at another destination point. As a practical matter, the buyer and seller has simply paid for a transportation service, but the product—which is otherwise identical to all of the other product Energy Transfer is transporting through the exact same pipeline systems—may be treated differently for emissions reporting purposes based simply on the legal technicality of whether title has transferred. How can this distinction really be material to investors?

As noted above, in cases where Energy Transfer does take title to hydrocarbons for resale to identifiable third parties, which occurs more frequently in its crude and NGL systems, the third-party purchaser will often sell those same fungible molecules of product to other third parties (who will often trade the molecules again and again) before reaching the next stage in the value chain. Indeed, in many segments of Energy Transfer’s business, the same commodity may be swapped tens or even hundreds of times before reaching its end user. For example, Energy Transfer moves about 3.5 million barrels of crude oil per day, and stores a significantly larger amount. Energy Transfer may hold title while storing crude, and then transfer it to a client that owns a storage tank at one of its facilities, only for the client to decide that it wishes to sell the crude due to price fluctuations, at which point Energy Transfer could buy back the same crude, resulting in a single barrel of stored crude changing hands many times in a single month. And after crude oil leaves our facilities, it may then be bought and sold dozens more times. It could be sold to a marketer or a broker. So too can crude oil be bought from a producer, transported, and then sold back to the same producer, only at a different place. Indeed, for our

³⁹ See Greenhouse Gas Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* 49 (2011), <https://bit.ly/3w3cXyi>; GHG Protocol at 39.

Bayou Bridge pipeline, 80% or more of our marketing affiliate’s business consists of purchasing crude oil, transporting it, and selling it back to the party from which it was originally bought.⁴⁰

The same dynamic applies with respect to natural gas (which may be sold at a pooling point and then swapped back and forth) and with respect to NGLs (which may be bought and sold as cargoes after being loaded onto a ship). These complicated economic arrangements make it virtually impossible to track a particular hydrocarbon from the time of production to end user, and will unavoidably result in multi-counting of the same GHG emissions. Reporting upstream or downstream emissions as Scope 3 emissions would therefore be misleading to investors because any estimates generated by Energy Transfer would necessarily involve a very large amount of “double counting”—i.e., the attribution of emissions to Energy Transfer that could also be attributed to another entity in the value chain, such as upstream producers or downstream consumers (particularly in situations where the same product is bought and sold back to Energy Transfer multiple times at the same facility). Indeed, Energy Transfer would likely have double counting within our own Scope 3 emissions in the various Scope 3 categories as the downstream use of our sold products may end up being included in the upstream categories such as business travel, employee commuting, capital goods, and leased assets. For example, a portion of our fleet vehicles are leased assets. Oil that we do take title to may be refined into gasoline. That gasoline may eventually be combusted in the leased vehicles or combusted by employees in their vehicles.

While the Proposed Rule states that registrants may disclose such double counting, simply disclosing the existence of double counting is unlikely to repair the damage reporting Scope 3 emissions data may do to investor perceptions. The average investor is unlikely to know how to meaningfully interpret Scope 3 emissions data, and will all too likely simply see gross emissions data and assume that larger numbers mean that the reporting entity is more exposed to climate change risks. As noted, this is not the case, as emissions data alone ignores other actions taken to make a business more resilient to climate change risks. Energy Transfer does not think that adding additional disclosures on such actions is the answer: doing so will only result in the need for unnecessary lengthy disclosures to correct the risk of investor misperception that should have never arisen in the first place.

For similar reasons, it would also be unworkable to require Energy Transfer to report emissions from upstream activities in its value chains. Although Energy Transfer will sometimes have information about where the hydrocarbons it is transporting originated, that will not necessarily be the case; for example, large quantities of gas may enter one of Energy Transfer’s pipeline systems after having been transported from another pipeline system, and in such cases details regarding the location or manner of initial production would not be available.

⁴⁰ These same concerns are applicable to the difficulty in our industry of determining accurate “unit of production” values for use in GHG intensity metrics (CO₂e/unit of production or CO₂e/Mscf) due to the nature of how the products within our pipeline flow into and out of the system. For example, sometimes the same barrel of product may exit our system, enter into a third party system, and then come back into our system. Or, some portion of the product is lost due to various reasons such as blowdowns, startups, or pin-hole leaks.

For both upstream and downstream emissions, these gaps in Energy Transfer’s knowledge cannot be filled by asking its business partners. In most cases, Energy Transfer has no contractual rights to obtain the information. In other cases, the commodity is bought and sold a number of times after it leaves Energy Transfer’s custody, and as a result even Energy Transfer’s customers do not have the relevant information about its end use or end users. Even if Energy Transfer’s clients did have this type of information, Energy Transfer would have to try to verify the data before including it in any mandated disclosures.

Energy Transfer understands that the Commission wishes to require Scope 3 emissions data so that companies cannot “avoid investors’ scrutiny” by outsourcing emissions.⁴¹ Respectfully, contracting to “outsource” liabilities in the broader sense is often not designed to avoid investor scrutiny, but rather is a legitimate method by which businesses protect themselves from potential legal risks, often to the benefit of the business and therefore their investors. The SEC does not otherwise make companies disclose when they have shifted liability to a third party. And to the extent others in a companies’ value chain bear risks that are material to a public companies’ own business, then existing SEC rules already require the disclosure of those risks.

iv. Timing concerns

Even if Energy Transfer were able to determine its Scope 3 emissions, the time involved in doing so would make it impossible to report this information at the time of its annual filing. The Proposed Rule contemplates that a company may rely on the Scope 1 emissions reported by other upstream and downstream companies to calculate its own Scope 3 emissions. But that emission data would not be publicly available until the annual filing deadline, and it is hard to fathom that a third party—who often would not even be in privity of contract with Energy Transfer—would provide Scope 1 emissions data prior to its own third-party attestation and filing with the Commission. And this doesn’t even take into account the many circumstances when the other members of our value chain are *not* publicly traded companies and do not have to calculate emissions at all or by any timeline and certainly do not have to disclose them.

Given the inability of Energy Transfer to accurately determine upstream or downstream emissions, requiring it to report such emissions would open up the possibility of unfair and unjustified liability risks, which the proposed safe harbor does not sufficiently protect against. For example, the safe harbor does not provide for any protections against private litigation. As a result, these provisions will likely lead to additional litigation from interest groups with an agenda that is separate and distinct from Energy Transfer’s investors. And the costs of such litigation, even when Energy Transfer ultimately prevails, will negatively impact both Energy Transfer and its investors.

If the Commission retains some Scope 3 disclosure requirements, then it should provide greater flexibility for registrants to determine what categories of Scope 3 emissions are likely to

⁴¹ Proposed Rule, 87 Fed. Reg. at 21,435.

be material to their business, and where there is sufficient data to make such assessments. Only where the data is reasonably available and the emissions likely to be material to a company's overall business should it be required to disclose those emissions. When this is the case, the Commission should provide additional time for the company to collect and verify such information before filing it. Alternatively, the Commission could instead allow registrants to provide an estimated range of Scope 3 emissions to give investors a more general sense of the Scope 3 emissions associated with a business, and any associated transition risks. Because companies will inevitably have to estimate Scope 3 emissions, this approach would have the benefit of being more transparent to investors, so that they understand that these figures do not have the accuracy associated with the other information in an annual filing.

v. *Scope 3 emissions categories*

Under the GHG Protocol's "Corporate Value Chain (Scope 3) Accounting and Reporting Standard," emissions are divided into 15 categories. In our experience, even companies that do attempt to calculate Scope 3 emissions using the GHG Protocol's guidance do not attempt to determine their Scope 3 emissions from each and every category. This is for good reason: often only a small subset of the categories will actually be material to a particular company's emissions, and attempting to calculate emissions around other categories would involve a tremendous effort with very little return. But the Proposed Rule appears to ignore this reality. The Proposed Rule requires disclosure of total Scope 3 emissions if "material" and defines Scope 3 emissions as "all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain" and then includes an opened-ended list of sub-categories where such emissions "might occur."⁴² Even if a registrant *does* have material Scope 3 emissions, it should only be required to disclose those categories of Scope 3 emissions that are material to its business, rather than all possible categories. This approach best aligns with the Commission's traditional focus (and investors' expectations) on materiality, as well as with the current industry practices for those calculating Scope 3 emissions.

If the Commission finalizes a rule, Energy Transfer recommends that:

1. The Commission eliminate the requirement for disclosure of Scope 3 emissions altogether.
2. In the event that Scope 3 emissions remain in the rule in some form, we strongly urge the Commission to:

⁴² *Id.* at 21,466 (proposed 17 C.F.R. § 229.1500(r)).

- a. Clarify that companies that transport or store products owned by third parties do not need to disclose Scope 3 emissions associated with those products.
- b. Clarify that the first step in the materiality determination for Scope 3 emissions involves assessing whether data and methodologies are available to make accurate and reliable estimates of categories of Scope 3 emissions, and permit registrants to state the categories of Scope 3 emissions that are not further assessed due to lack of data or estimation methodologies.
- c. Allow for companies to provide estimated ranges of Scope 3 emissions.
- d. Enhance and expand the Scope 3 safe harbor to make clear that registrants cannot face liability for omission of categories of Scope 3 emissions that cannot be reasonably calculated due to lack of data or appropriate methodologies.
- e. Create permanent staggered reporting deadlines for Scope 3 (e.g., a one-year delay) to allow registrants to rely on the assured data of their upstream and downstream counterparties in determining Scope 3 emissions.
- f. Only require disclosure of the sub-categories of Scope 3 emissions that are material.

B. Scope 1 and 2 Emissions

Energy Transfer believes that the Proposed Rule fails to appreciate the significant difficulties and uncertainties associated with reporting of Scope 1 and 2 emissions. As detailed below, the Commission (i) wrongly assumes that the requirements align with EPA reporting regulations;⁴³ (ii) demands data on a more aggressive timeline than EPA; (iii) exposes registrants to a different set of liability risks; (iv) requires infeasible attestation; and (v) will harm rather than assist investors in making informed decisions.

i. Scope 1 divergences from EPA reporting

The Proposed Rule repeatedly suggests that reporting of Scope 1 emissions should not be overly burdensome or complicated because “[r]egistrants with large stationary sources of

⁴³ The Greenhouse Gas Reporting Program (“GHGRP”) is codified at 40 C.F.R. Part 98.

emissions already report Scope 1 emissions data to the EPA,”⁴⁴ and therefore that data can be repurposed for SEC reporting at “low[] incremental costs.”⁴⁵ In doing so, the Commission overlooks the myriad of ways that its proposed disclosures diverge from the EPA reporting requirements. The EPA reporting rule, the GHGRP, uses defined quantification methodologies for *some* GHG emitting units and imposes reporting requirements for facility-level information.⁴⁶ It includes a *de minimis* exemption so that facilities emitting less than 25,000 metric tons of CO₂e per year are not required to report.⁴⁷ And it requires facilities to report on an operational control basis. By contrast, the Proposed Rule sets a corporate- (rather than facility-) level reporting standard. Based on initial estimates, Energy Transfer has more than 600 additional sites, hundreds of engines, compressors, tanks, and other types of equipment that fall outside of the EPA reporting requirements. And the EPA reporting requirements certainly don’t account for smaller equipment—lawn mowers, weed whackers, leaf blowers, and the like—that all generate some amount of Scope 1 GHG emissions. In addition, rather than adopting an operational control standard, the Proposed Rule would require reporting on the same basis as financial reporting. These differences will make GHG reporting to the Commission a drastically different exercise than current (already cumbersome) reporting to the EPA.

These divergences make a difference. Take the Commission’s decision to deviate from EPA’s facility-focused approach. The Proposed Rule leaves questions of how to account for those emissions under a variety of different operating scenarios. For example, Energy Transfer operates a site with four independent processing trains. One of these processing trains is a joint venture. All four processing trains share a flare, and methane and other combustible gases from all four processing trains will be comingled in the flare header. The methane and other combustible gases will result in CO₂ and N₂O emissions when combusted. A flare’s control efficiency is not 100%; flaring also results in emissions of uncombusted methane. Under this scenario, GHG emissions are quantified by using engineering calculations and data from a flowmeter and gas chromatograph. EPA only requires that the total emissions from the flare be reported, but under the Proposed Rule it is unclear if Energy Transfer and its joint venture partner must somehow account for what portion of the methane emissions should be allocated to each entity and each train.

There are similar challenges to allocating loading emissions. When loading products into a truck, rail, or marine vessel, some facilities are required to “control” the emissions from the loading activity. This control can be achieved a variety of ways, such as by routing the emissions to a flare or a vapor combustor or vapor balancing the tank and the truck. When, for example, products are loaded onto a truck, the truck may arrive at the facility with existing vapors from the residual product from a previous load or from vapors transferred to the truck as

⁴⁴ Proposed Rule, 87 Fed. Reg. at 21,377; *see id.* at 21,386 n.519, 21,374.

⁴⁵ *Id.* at 21,442.

⁴⁶ For Energy Transfer’s operations in the gathering and boosting sector, emissions are reported on a basin-by-basin basis.

⁴⁷ *See* 40 C.F.R. § 98.2(a)(2).

a result of vapor balancing when it unloaded the last load. As Energy Transfer loads its product onto the truck, those existing vapors are displaced by the liquid being loaded and are emitted along with vapors that form as a result of loading activity itself. There is no practical way to discern what emissions are from the loading activity and what emissions are due to the vapors that already exist in the truck when it comes on site to pick up a load. While this may seem like a minor amount of emissions, these sorts of activities happen repeatedly across Energy Transfer's many facilities on a regular basis and demonstrate why calculating Scope 1 emissions is not nearly as simple or straightforward as the Commission suggests.

This additional reporting will come at a high cost: EPA estimated if it lowered its own *de minimis* reporting threshold from 25,000 to 1,000 metric tons CO₂e per year it would cost an additional \$266 million (in 2006 dollars).⁴⁸ By EPA's estimates, the cost on a per facility basis was approximately \$6,000 in 2006 dollars.⁴⁹ EPA updated the reporting requirements for petroleum and natural gas systems in 2010. In doing so, EPA estimated that the incremental cost to reduce the bright line threshold from 25,000 to 1,000 would cost an additional \$54.43 million (2006 dollars), and would require an additional 9,836 facilities to report.⁵⁰ By EPA's estimates, the incremental cost on a per facility basis is approximately \$5,500 in 2006 dollars, and the facilities that currently do not need to report to the EPA would incur a cost of roughly an additional \$12,500 in 2006 dollars per facility. Based on EPA's figures, the Proposed Rule could mean an additional cost to Energy Transfer of \$7,000,000 or more in 2006 dollars just to track and report Scope 1 emissions from additional facilities. These figures also suggest that the Commission has not fully accounted for the cost of this rule.

In addition, the Commission fails to appreciate that the rigid attestation and reporting deadlines in the Proposed Rule unreasonably increase risk of liability to registrants with respect to Scope 1 and 2 emissions because, in a departure from other emissions reporting regimes, the compressed reporting timeline removes the opportunity for proper data verification. For example, EPA's GHG emission reporting deadline is March 31. California goes even further, staggering emissions reporting so that an initial report is made in April while a verified report for the prior year's emissions is not required until the fall of the subsequent calendar year.

The Commission's proposed timeline also ignores the fact that many companies submit GHG data to EPA based on various assumptions, including operational run-time, molecular comparison of natural gas streams, weather conditions and other factors. In order to avoid fines and penalties for underreporting GHG emissions, the natural tendency for most companies is to utilize conservative assumptions which often lead to overreporting of GHG emissions.⁵¹ And since EPA's reporting requirements only apply to direct emissions, a subset of our facilities (and

⁴⁸ See Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56,260, 56,363 tbl. VII-2 (Oct. 30, 2009).

⁴⁹ See *id.*

⁵⁰ See Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems, 75 Fed. Reg. 74,458, 74,477 tbl. 7B (Nov. 30, 2010).

⁵¹ See also EPA, *Greenhouse Gas Reporting Program Report Verification* (2015), <https://bit.ly/3b52BHe>.

thus a subset of our total Scope 1, and *none* of our Scope 2 emissions), we would need to do further work beyond our EPA disclosures in order to comply with the proposed requirements. Our experience with the time, cost, and practical challenges of providing EPA with GHG data for facilities covered by the EPA reporting rules leaves us concerned that the SEC's proposed requirements will be unworkable.

While erring on the side of overreporting to EPA presents relatively little risk, disclosures in an SEC filing are fundamentally different: investors expect that hard numbers in these filings have been fully vetted and are accurate. From the registrant's perspective, the figures must be presented with a much higher degree of clarity and accuracy, or else risk misleading our investors or providing fodder for activist groups who may look to use these disclosures to bring suits against us—to the detriment of both our business and our investors. Indeed, the proposed attestation requirements will only further investors' expectations that the Scope 1 emissions disclosures have a high degree of accuracy, when in reality these figures are refined over time at great time and expense. Given the lack of any safe harbor or other protections found in the Proposed Rule for Scope 1 and 2 emissions, fast-tracked reporting unnecessarily exposes registrants to legal liability while potentially misleading investors about the accuracy of the disclosed emissions. This is all the more true because there are unlikely to be a sufficient number of qualified GHG attestation providers who can provide the services necessary for the proposed requirements, and it is not clear that Scope 1 and 2 emissions *can* reach a level of "reasonable assurance." The issue is further compounded when considering the need for internal controls. In order to meet investor expectations, Energy Transfer will need to verify its current data gathering and calculation methodologies to ensure they will pass external auditing standards under the Proposed Rule. In practice, this may involve hiring one third party to educate us as to what needs to be done to meet the applicable standards and the hiring of a second third party to undertake the actual audit. And the Proposed Rule assumes it will even be possible to reach "reasonable assurance" for these emissions calculations. In practice, most emissions are calculated using an emission factor and an activity rate, rather than being directly detected and recorded. Put simply, GHG data is not analogous to financial data.⁵²

While the Commission attempts to address the data gaps that will necessarily exist in GHG emissions availability by allowing registrants to use reasonable estimates of GHG emissions for its fourth fiscal quarter "as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined

⁵² Energy Transfer notes here that while we have likewise done our best to provide accurate and correct information in this comment letter based on our collective experience as an organization, this letter itself is *not* being filed with the SEC and the information contained in it has not undergone the kind of rigorous internal verification processes necessary for our SEC filings. As with other voluntary disclosures, we have made these statements in good faith and to the best of our knowledge, but no one, including the signatory of this letter, can "attest" to its contents, and it should not be treated or viewed by any reader or investor as providing information similar to what we would provide in our SEC filings. Put simply, SEC filings are different in kind from other statements that a company makes. Indeed, that is part of what causes the burdens we describe in this letter. We do not want to leave anyone with the impression that this letter or its contents are on par with our annual Form 10-K report or other filings.

GHG emissions data for the fourth fiscal quarter,”⁵³ this provision only highlights the fact that the Proposed Rule essentially requires registrants to provide investors with inaccurate data. As a result, the Proposed Rule will undermine rather than further the SEC’s goal of providing investors with consistent, comparable, and reliable information. Investors would be better served if companies were given sufficient time to collect and verify any Scope 1 and 2 emissions that companies are required to report. Alternatively, the SEC should allow companies to provide estimated ranges of Scope 1 and 2 emissions, with appropriate explanatory language so that investors understand that these figures are not being provided with the same level of accuracy that investors have come to expect from financial metrics in a company’s filings. The Commission should also consider allowing registrants to furnish, rather than file, this emissions data in recognition that it cannot be provided with the same level of accuracy as other figures in a company’s filings.

Energy Transfer is also concerned that the requirement that registrants disclose emissions “[b]oth by disaggregated constituent greenhouse gases and in the aggregate”⁵⁴ will further inundate investors with information that will confuse, rather than inform. While Energy Transfer understands that some investors are focused on a registrant’s GHG emissions, and methane emissions in particular, the level of granularity called for in the Proposed Rule with respect to other GHGs in a registrant’s Scope 1 emissions calls into question the ultimate value investors may receive from this additional information.

The Commission justifies this requirement by stating that “[f]or example, if a government targets reduction of a specific greenhouse gas, knowing that a registrant has significant emissions of such gas would provide insight into potential impacts on the registrant’s business.”⁵⁵ While EPA does, on occasion, pass industry and GHG constituent specific regulations (for example, methane regulations for new sources in the oil and gas sector), such regulations will only target a small subset of public companies. To the extent those regulations do materially impact a specific registrant, they are already required to disclose those risks under the SEC’s existing standards. Respectfully, the handful of specific situations where such regulations may be passed do not justify flooding investors with additional constituent-specific calculations in every annual filing for every public company for all three scopes of emissions. To give just one example of the non-material disclosures that the Proposed Rule would require, there are thousands of air conditioners for Energy Transfer’s fleet of company vehicles as well as for its corporate and field offices. Air conditioners use a variety of fluorinated GHGs as refrigerants.⁵⁶ Fluorinated GHGs can also be used in fire suppression and have vastly different global warming potentials. How would it be useful to investors to know the emissions associated with each of these fluorinated GHGs in disaggregated emissions of each across the entire company? What insight would it give them into our *material* climate-related risks? Rather than

⁵³ Proposed Rule, 87 Fed. Reg. at 21,469 (proposed 17 C.F.R. § 229.1504(e)(4)(i)).

⁵⁴ *Id.* at 21,345.

⁵⁵ *Id.* at 21,375.

⁵⁶ *See* 40 C.F.R. Subpart A, Appendix tbl. A-1.

prescribing that all three scopes must always be presented by disaggregated consistent GHGs, the Commission should allow companies the flexibility to determine when such information would be material under the Commission’s traditional principles-based approach.

From a policy perspective, overemphasizing the importance and role of certain GHG constituents over others may lead to the unintended consequence of directing corporate attention, focus, and resources away from more important environmental initiatives. For example, the current net-zero GHG movement completely ignores priority air pollutants such as Nitrogen Oxide, Sulphur Dioxide, Volatile Organic Compounds, Particulate Matter (“PM”) and other air toxics that arguably have a greater and more direct impact on human health and the environment. Recent health studies have shown that PM emissions have the greatest impact on human health, yet the Commission does not request the accounting and reporting of this or the setting of targets related to PM emissions reductions.

ii. Scope 2 emissions

The Proposed Rule departs from EPA’s definition of Scope 2 emissions and will complicate and expand the reporting requirements. EPA defines Scope 2 emissions as “indirect GHG emissions associated with the purchase of electricity, steam, heat, or cooling.”⁵⁷ Without explanation, the Proposed Rule instead defines 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.”⁵⁸ The additional “or acquired” language will create reporting difficulties for companies such as Energy Transfer: we have facilities that do not purchase electricity, but they instead acquire it from a neighboring facility owned and operated by a third party. Similarly, we also have facilities that purchase electricity and provide it to neighboring facilities owned and operated by a third party. Under the proposed definition of Scope 2 emissions, both the other company that purchased the electricity and the company that acquires it will need to include the emissions associated with the electricity in their respective Scope 2 emissions. At least in Energy Transfer’s experience, this will be difficult to do because there is usually a contractual right to “acquire” the electricity without any accounting between the two entities about how much electricity the acquiring entity actually receives or uses. And when an entity is simply acquiring the electricity, it will often not have access to the electricity bill, which usually serves as the source of Scope 2 data. Even when we do have access to the electric bill to determine overall electric usage from the two facilities, we often will not have more specific information about which facility (or entity) used what percentage of the electricity. This situation will also result in double counting of Scope 2 emissions.

Scope 2 emissions data will also not be comparable across companies because there are two different approaches to determining Scope 2 emissions. The location-based approach

⁵⁷ EPA, EPA Center for Corporate Climate Leadership, *Scope 1 and Scope 2 Inventory Guidance*, <https://bit.ly/3NWfPER> (last updated Sept. 29, 2021).

⁵⁸ Proposed Rule, 87 Fed. Reg. at 21,466 (proposed 17 C.F.R. § 229.1500(q)) (emphasis added).

calculates emissions based on an average grid factor while the market-based approach calculates emissions based on generator-specific factors from the generators or retailers with which the company contracts. The Proposed Rule allows both the market-based and location-based approach to quantifying Scope 2 GHG emissions, thus allowing for different reporting by different companies.⁵⁹ The magnitude of the Scope 2 GHG emissions will also not be useful to inform investors about climate-related risk because there are sources of zero-emissions electricity that are affected by other factors outside the scope of climate change such as nuclear energy and hydropower. Knowing the magnitude of Scope 2 GHG emissions does not inform an investor of the mix of sources providing that energy, and providing the magnitude of Scope 2 emissions may even mislead an investor into thinking that a company is not as exposed to risks from *other* safety or environmental regulations that make their zero-emissions electricity source no longer economically viable, such as the promulgation of additional nuclear safety regulations or endangered species affected by hydropower.

Finally, Energy Transfer is concerned that the Commission has incorrectly conflated general investor interest in climate and environmental issues with specific interest in granular and specific GHG emission data. Based on its conversations with unitholders and other stakeholders, Energy Transfer does not believe that Scope 1 and 2 emissions figures are considered to be “decision-useful” information by our investors. In our experience, some investors desire information about Energy Transfer’s more general ESG efforts, but they generally do not request (or even express interest in) the specific metric of Scope 1 and 2 GHG emissions, much less demand fully accurate accountings of that metric. Even our investors who have an interest in climate matters are more interested in specific climate impacts than specific GHG emissions figures broken out by scope or by product. Indeed, the investors who have raised these issues with us are often less interested in climate data per se, and more interested in ensuring that they can appropriately meet their own ESG-related investing criteria if they choose to invest in our company.

In order to address these concerns, Energy Transfer recommends that any final rule that includes GHG emissions disclosures, the Commission should consider the following measures:

1. Allowing companies to provide GHG estimate ranges rather than attempting to calculate precise emissions figures;
2. Allowing companies to base organization boundaries on an operational control basis to align with EPA reporting requirements;
3. Allowing companies to decide whether to provide disaggregated constituent GHG figures;

⁵⁹ *Id.* at 21,386.

4. Allowing GHG emissions data to be deemed “furnished” rather than “filed” for all Scopes;
5. Providing companies with additional time to collect and verify GHG emissions data before annual disclosures;
6. Only requiring limited assurance (not reasonable assurance) attestation for Scope 1 and 2 emissions;
7. Expanding the proposed safe harbor protections that would apply to Scope 3 emissions by including Scope 1 and 2 emissions; and
8. Revise the definition of Scope 2 emissions by removing the “or acquired” language.

V. The Proposed Amendments to Regulation S-X Should Be Removed or Significantly Altered.

The Proposed Rule includes amendments to Regulation S-X that would require climate-related financial metrics to be included in a note to the registrant’s filed financial statements. This disclosure would be subject to audit and would fall within the scope of the registrant’s internal control over financial reporting.⁶⁰ Proposed amendments to Regulation S-X would impose a 1% threshold for line-item disclosures.⁶¹ More specifically, disclosure of financial metrics will be required if the sum of the absolute values of all the impacts on the line item total more than 1% of the total line item for the relevant fiscal year.⁶² Energy Transfer respectfully submits that the proposed revisions to Regulation S-X are unworkable to implement and will confuse investors by inundating them with non-material information. Specifically, the proposed requirements (i) use a 1% threshold for line item disclosures which is inappropriately low; (ii) ignore the fact that companies do not track many of the proposed categories of climate-related impacts on a line-item basis and, relatedly, cannot retroactively create such data; (iii) use broad and nebulous terms that require far too much guesswork by registrants; and (iv) do not provide sufficient safe harbors for the proposed disclosures. Energy Transfer therefore requests that these requirements be removed from any final rule.

The proposed 1% threshold for line-item disclosures is inconsistent with the Commission’s traditional guiding principle of materiality. Public company disclosures are already anchored on a statutorily mandated materiality standard that has been thoughtfully interpreted by our judicial system in a manner that provides a high level of certainty as to the application of this standard in a wide variety of situations. As a result, Energy Transfer is

⁶⁰ See 87 Fed. Reg. at 21,464 (proposed 17 C.F.R. § 210.14-01).

⁶¹ See *id.* (proposed 17 C.F.R. § 210.14-02).

⁶² See *id.*

already disclosing material climate-related information to its investors. By contrast, the proposed 1% threshold will result in reporting information to investors that is simply not material. Because investors are familiar with the SEC's traditional principle of materiality, they will be misled into believing that much of this information **is** material.

While Energy Transfer appreciates that some investors may desire financial information related to matters that are not material to a registrant in the traditional sense of the term, there are other avenues available to provide this information to investors that may seek it, such as direct engagement with the company or through voluntary sustainability reporting. In such circumstances, Energy Transfer can directly engage with the investor to understand their particular information needs. But providing the granular, non-material information required by the Proposed Rule **in a securities filing** will cause investors to make assumptions about the impact that climate-related risks generally, and weather- and transition-related risks more specifically, are actually having on our business.

The 1% threshold will therefore lead to confusion of investors while simultaneously taking tremendous resources for companies like Energy Transfer to calculate. Indeed, these calculations will also require complex determinations and value judgments to even determine the baseline question of whether the 1% threshold has been met. The SEC proposes that the disclosure threshold is “not required if the sum of the absolute values of all the impacts on the line item is less than one percent of the total line item for the relevant fiscal year.”⁶³ For a company of Energy Transfer's scale and diversity of operations and geography, many of the items listed, such as severe weather events, will simply not be material. But the internal assessments necessary to aggregate all such events and determine whether they then meet the 1% threshold will be incredibly time-consuming and burdensome. For the rare situations where particular extreme weather events do have material impacts on Energy Transfer, such events are better discussed (as they already are) through Regulation S-K narratives.

The proposed 1% threshold is also inconsistent with “rule of thumb” quantitative thresholds for materiality, which generally consider items to be material based on whether the dollar value of the item at issue exceeds between 3-5% of a company's total assets, net income or operating income. The Proposed Rule notes that the “Commission has used similar one percent thresholds in other contexts.”⁶⁴ Presumably, this fact was included to imply that the Proposed Rule's 1% threshold is within the realm of “normal” compared to other reporting requirements and therefore is appropriate and reasonable; however, the other contexts for a 1% threshold that are cited in Footnote 347 of the Proposed Rule are not reasonable analogies to the proposed threshold. The examples cited use a 1% threshold either in comparison to sales and revenues (generally the largest number on the income statement) or in comparison to total assets (generally the largest number on the balance sheet).⁶⁵ By contrast, the Proposed Rule imposes

⁶³ See *id.* at 21,465 (proposed 17 C.F.R. § 210.14-02(b)).

⁶⁴ See 87 Fed. Reg. at 21,366 & n.347.

⁶⁵ *Id.*

a 1% threshold by line-item; thus, the materiality threshold in the Proposed Rule would require disclosures of items at a much lower threshold than either of the cited rules.

Energy Transfer does not currently separately track many of the categories of climate-related impacts on a line-item basis, and the internal accounting changes necessary to accomplish this would require substantial time and resources. In addition, the 1% threshold is so low that Energy Transfer's existing processes and disclosure controls likely will require significant modification to accommodate the Proposed Rule. From a practical standpoint, it may be impossible for a large, complex registrant like us to design and implement effective disclosure controls around a reporting requirement such as this. The Proposed Rule would also require that this line-item information be provided for historic periods, with no phase-in period. If the rule is finalized on the Commission's proposed schedule, Energy Transfer would be required to retroactively gather data for 2021 and 2022 in order for Energy Transfer to create climate-related financial data for fiscal years 2021 and 2022 in the formats contemplated by the Proposed Rule. Such data collection would be incredibly burdensome and potentially impossible to achieve.

Even if the requirements of the Proposed Rule could be met, the practical implications of the rule would still yield negative consequences. The 1% line-item threshold would likely result in registrants being forced to report items that are clearly immaterial, including such items that may have no correlation to climate change, and would also likely result in registrants making unnecessary reporting changes to avoid the mandatory disclosure of immaterial information that would be triggered by an unnecessarily onerous threshold. For example, Energy Transfer has historically reported asset impairments separately from other charges and has included disclosure to discuss the reasons for any material impairments. We believe this approach has provided useful information to investors and other users of our financial statements. However, the implementation of the Proposed Rule would force us to reconsider how (or whether) we report such information.

With a total of more than \$100 billion (cost basis) of property, plant and equipment owned by Energy Transfer and its subsidiaries across a wide range of geographic locations, it is very possible that a severe weather event could cause Energy Transfer to record an impairment of fixed assets. Regardless of whether the weather event was climate-related or not, the Proposed Rule would require disclosure if the impairment exceeds 1% of the line-item where it is reported. Thus, in a period where less than \$100 million of other impairments are recorded in the impairment line item, even an impairment as small as \$1 million or less (potentially representing less than 0.001% of Energy Transfer's total assets) would require disclosure under the Proposed Rule. In addition, many other scenarios are possible where a registrant could be forced to disclose clearly immaterial items under the proposed 1% threshold. Alternatively, registrants will likely consider reporting changes (such as aggregating line items) to avoid such scenarios when possible; thus, it is possible that the Proposed Rule would result in unintended consequences on registrants' reporting, including actually decreasing the amount of information disclosed in some cases.

Not only is the 1% line-item threshold too low for a registrant to be able to effectively identify and report, but the disclosure itself is too nebulous to understand and implement. For example, the Proposed Rule includes an example of “changes to revenue or costs from disruptions to business operations or supply chains [impacted by severe weather events and other natural conditions],”⁶⁶ but it would be difficult or impossible to quantify such an impact in many circumstances. The Proposed Rule also includes an example of “changes to operating, investing, or financing cash flow from changes in upstream costs, such as transportation of raw materials,”⁶⁷ but such impacts would likely be difficult or impossible to quantify—and an estimation of such impacts would almost certainly be ineffective, given the low materiality threshold established in the proposed rule. Multiple other examples also exist (including those enumerated by the Proposed Rule, as well as myriad other scenarios not specified in the Proposed Rule) for which it would be difficult or impossible for registrants to quantify and/or to design and implement effective disclosure controls.

This requirement is made even more burdensome by the proposed requirement that Energy Transfer also “[p]rovide contextual information, describing how each specified metric was derived, including a description of significant inputs and assumptions used, and, if applicable, policy decisions made by the registrant to calculate the specified metrics.”⁶⁸ As this requirement highlights, there are a myriad of **assumptions** and **policy decisions** that will have to go into these determinations. For example:

- When (or what portion) of an expenditure for routine facility maintenance was related to a “severe weather event[] and other natural condition[]”? Does Energy Transfer need to try to determine whether repairs would have been less expensive if not for slow changes in natural conditions at or around some of its facilities?⁶⁹
- What if facilities are built or moved for a variety of business reasons, including access to new markets, but where the location is also influenced by considering the potential for flooding or sea level rise at the new location? Should all, some, or none of the expenditure be allocated to “mitigat[ing] risks of severe weather events and other natural conditions”?⁷⁰
- What if facilities are altered or upgraded in response to regulatory changes, and those regulatory changes are premised in part on climate-related considerations? Many new

⁶⁶ See *id.* at 21,367.

⁶⁷ See *id.* at 21,465 (proposed 17 C.F.R. § 210.14-02(d)(2)).

⁶⁸ See *id.* at 21,464 (proposed 17 C.F.R. § 210.14-02(a)).

⁶⁹ See *id.* at 21,465 (proposed 17 C.F.R. § 210.14-02(e)).

⁷⁰ See *id.*

regulatory requirements cite climate change alongside more central concerns such as safety in their explanatory preambles.⁷¹

- Energy Transfer buys, sells, and trades a wide variety of commodities each and every day. Is it supposed to determine whether the price fluctuations in these commodities are a result of severe weather, global geo-political considerations, or other market forces and then determine how to dis-entangle and reflect those impacts—both positive and negative—on a line-item basis?⁷²
- Each time Energy Transfer loses a sales contract, does it need to engage with its former customer to determine if, and to what extent, the loss was the result of “changes to revenue or cost due to new emissions pricing or regulations”?⁷³

Respectfully, Regulation S-X financial disclosures are not the proper place for such judgments and policy decisions. And the fact that each public company will have to make its own, different, assumptions and policy decisions demonstrates why this proposed requirement will not result in the “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.”⁷⁴

If the rule is finalized as proposed, companies like Energy Transfer will be left with the challenging task of making these assumptions and policy decisions in the face of the significant liability risk that accompanies disclosures in a securities filing. If the Commission does include any of these requirements in a final rule, it should therefore provide public companies with liability protection from the uncertain assumptions they will necessarily have to make to comply with the rule. Because these assumptions and policy decisions do not involve forward-looking statements, they are not addressed by the current Private Securities Litigation Reform Act (“PSLRA”) safe harbor. To the extent the Commission retains this requirement, a new safe harbor is needed.

Energy Transfer therefore respectfully recommends that any final rule entirely remove the proposed changes to Regulation S-X. In the event that these disclosure requirements remain in the proposed rules in some form, we strongly urge that the Commission:

1. Allow companies to determine the appropriate materiality threshold as with other Regulation S-X requirements, or alternatively use a threshold of 5% (consistent with the “rule of thumb” referenced in SAB 99) and/or a threshold based on total assets or income;

⁷¹ See *id.*

⁷² See *id.* at 21,464 (proposed 17 C.F.R. § 210.14-02(c)(1)).

⁷³ See *id.* at 21,465 (proposed 17 C.F.R. § 210.14-02(d)(1)).

⁷⁴ 87 Fed. Reg. at 21,335.

2. Phase in any historic period requirement so that historic data is not required for the first two reporting years;
3. Narrow the definitions of “climate related event” and “transition activities” and provide additional guidance on how companies should treat expenditures with multiple purposes.

VI. The Proposed Rule Will Harm the Ability of Public Companies to Acquire Private Companies and Their Assets.

The Proposed Rule also contemplates requiring the same financial disclosures and emissions information discussed above for newly acquired (previously private) entities or assets. Such a requirement would pose problems for public companies like Energy Transfer, as well as Sunoco, as few potential acquisition targets track climate-related information in the forms and with the granularity required by the Proposed Rule. This proposal could therefore have significant chilling effects on any potential buyer’s willingness to acquire such companies or their assets. The Proposed Rule (i) ignores the fact that private companies will have no reporting history, let alone any of the climate-related data (or the internal systems necessary to gather and synthesize such information) mandated by the rule; and (ii) does not give public companies sufficient time to collect and integrate such data after an acquisition.

Once acquired, climate data and disclosures related to an acquired entity or asset’s operations would be required for the same number of years as financial statements are presented. In Energy Transfer’s experience, private entities are unlikely to have climate-related data available, particularly in the forms required by the Proposed Rule, and thus will not be able to supply this information. Because of the significant costs associated with generating this data, this could become a meaningful barrier when Energy Transfer (or Sunoco) looks to acquire such companies. Smaller private companies will be hit the hardest (in terms of merger and acquisition opportunities) by the Proposed Rule, as these companies often do not have the resources to generate the data and disclosures mandated under the Proposed Rule. By way of example, in early 2022, Energy Transfer acquired a company that owns and operates an underground salt cavern storage facility and related assets. The company had a very small management team and at the time of the acquisition did not have audited financial statements. Under the Proposed Rule, Energy Transfer will be required to somehow generate climate-related information for a company that previously had not dedicated sufficient resources to create even its own audited financial statements. Gathering the kind of accurate emissions data required by the Proposed Rule would be virtually impossible in this scenario.

These issues also exist with regard to sales of privately held assets to public companies, because there will not be readily available climate-related data, and particularly data of the quality needed for a securities filing about the operations of these assets. This will again disproportionately impact small private businesses that lack the resources or sophistication to generate the kind of data required by the Proposed Rule. This will significantly disadvantage public companies seeking to grow, notwithstanding the aim of the Proposed Rule of protecting public markets. Referring to the example in the previous paragraph, the seller’s ability to

monetize its investment would be significantly limited if public companies like Energy Transfer were suddenly hesitant to transact with smaller private companies because of the new requirements of the Proposed Rule.

Energy Transfer recommends that the SEC provide at minimum a one-year lag between the fiscal year in which a private entity was acquired and the year in which the acquiring public company must disclose any climate-related data related to the acquired company's operations and assets. Energy Transfer also understands the Proposed Rule to not require historic data from newly acquired companies or their assets, as this information is not otherwise reflected in its financial statements, but asks that the Commission clarify this reading in any final rule.

VII. The Proposed Definition of “Physical Risk” Should be Limited and Clarified.

The Proposed Rule defines “climate-related risks” to include “physical risks” and defines physical risks to “include both acute risks and chronic risks to the registrant’s business operations or the operations of those with whom it does business.”⁷⁵ The proposal does not further explain what it means “to do business” with others, and could be read as applying to a company’s entire supply chain. For the same reasons described above with regard to assessing Scope 3 emissions, this broad definition would be unworkable for Energy Transfer’s business model, and would result in information that would be useless at best and more likely misleading to investors. As described above, Energy Transfer “does business” with a wide variety of suppliers and customers, and in some circumstances this “business” is nothing more than buying and selling commodities back and forth within a single facility due to price fluctuations. In other instances it is “doing business” with shippers who export its products to foreign markets. Our products are shipped all over the world, and a requirement that involved gathering detailed information about the physical risks to every entity in our global value chain would simply be unworkable. In addition, the Proposed Rule specifies that acute risks are event-driven and may relate to shorter term extreme weather events, such as hurricanes, floods, and tornadoes, among other events, and that chronic risks relate to longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water. In light of the markets for Energy Transfer’s products, both domestically and internationally, the Proposed Rule would likely require Energy Transfer to analyze and predict weather events, weather patterns, the potential for higher sustained temperatures and the other items related thereto across the entire globe in order to allow Energy Transfer to even begin to assess the risks that these matters could have on Energy Transfer’s business. This analysis would likely entail hiring an army of climatologists around the world and would involve such a massive endeavor as to make it virtually impossible to produce any information that would be meaningful to an investor.

These disclosures will also become more speculative and less useful to investors the further we go upstream or downstream in our value chain, and will not provide consistent,

⁷⁵ 87 Fed. Reg. at 21,466 (proposed 17 C.F.R. § 229.1500(c)(1)) (emphasis added).

comparable and reliable information for investors. This is because determining physical risks requires the use of assumptions, speculations, and models to determine those risks, all of which can result in radically different results. Indeed, the difference in modeling can result in very different results between companies that are in the same industry and have similar geographic footprints. Such problems will only be compounded if we have to attempt to ascertain the physical risk to those with whom we do business. Are we supposed to ask them about their physical risks? Are we supposed to somehow verify what they have told us? What if they define or model those risks differently than we or other companies do? What if they are private or foreign companies and simply don't have or won't share this information?

To the extent that climate-related issues pose material physical risks to Energy Transfer's own facilities, then we already have obligations under existing SEC regulations to disclose such risks. In fact, Energy Transfer included three risk factors relating to climate change in its most recent Form 10-K, including disclosures about potential impacts from extreme weather and other physical events. Likewise, to the extent a particular customer is so central to Energy Transfer's business that a risk to that customer would be material to Energy Transfer, then we already have an obligation to disclose that risk. But for a company like ours with a large geographic footprint and thousands of miles of pipelines, the zip-code level disclosures mandated by the Proposed Rule will be unworkable and far too detailed to be helpful to investors. The same problem holds true for the flood-zone disclosures. Disclosing the percentage of our assets located in a flood zone will not provide investors with a picture of the risk of flooding to the operation of those assets, or, more importantly, with the risk to revenue associated with flooding, or even the value of the asset in the flood plain. Put simply, the percentage of square meters of assets in flood zones does not directly correlate with actual financial risk.

As a result, these physical risk disclosures will not add any decision-useful information to Energy Transfer's disclosures, and will instead make it harder for investors to parse the material from the non-material information included in Energy Transfer's filings. This definition serves as yet another example of why the Commission should continue to use a principles-based materiality standard for disclosures rather than a new prescriptive set of disclosure requirements. To the extent the Commission does retain its current approach, at a bare minimum, the Commission should remove any reference to "those with whom" a registrant "does business" from the definition of "physical risk" in the final rule. The Commission should also clarify that only physical risks that are *material* to a company's operations—in the traditional sense of the term as defined under securities laws and case law—need to be disclosed.

VIII. The Commission Should Provide Additional Time Before the Rule Goes into Effect.

The Commission has indicated that it will finalize the Proposed Rule by the end of this year. If it does so, Energy Transfer would be required to begin making most of the mandated disclosures for fiscal year 2023, and Scope 3 disclosures for fiscal year 2024 under the proposed compliance dates. It is simply not feasible for companies to revise, revamp and in some cases replace their internal reporting systems in time to capture, verify, and disclose the vast amount of new information required under the Proposed Rule. Determining how the requirements apply

to each of Energy Transfer's separate lines of business, and then aggregating that information appropriately will take far longer than a year.

When Energy Transfer files its Form 10-K for fiscal year 2023, it will still be preparing and verifying its GHG emissions data for EPA. It normally takes about six months for Energy Transfer to collect all of the data that it needs to report to EPA—and that figure does not include time necessary for subsequent verification with the agency. At the very least, the Commission should give issuers two additional years before requiring any GHG emissions data, and thereafter allow a full year to collect the data before it has to be reported. Given that GHG emissions data is unlikely to materially change from fiscal year to fiscal year, this one-year lag time will have no meaningful impact on investment decisions. In addition, the Proposed Rule includes attestation requirements for Scope 1 and 2 emissions. It is unlikely that there is a sufficient market of attestation providers for the implementation timeline that the SEC has proposed, particularly as now all public companies will need to find a provider. These considerations all demonstrate why the SEC should provide additional time before the compliance dates become effective.

For companies like Energy Transfer, which have consolidated subsidiaries operating in multiple different sectors, this timeline will be particularly challenging. The climate-related considerations will differ between the entities, and separate reporting and internal control systems will need to be set up within each entity to account for the nature of their operations. Regarding the proposed amendments to Regulation S-X and the 1% disclosure threshold for the reported year, the same timeline issues become apparent. This threshold will require the creation and implementation of a new infrastructure and reporting system.

By rushing the compliance dates, the Commission is creating a real risk that companies will be forced to disclose unverified information that has not been vetted through appropriate internal channels, thereby undermining the Commission's stated desire to provide investors consistent, comparable, and reliable climate information.

Energy Transfer recommends that the SEC provide an additional two years for compliance, beyond what it currently proposes. This will allow for the development of those systems, to include hiring and upskilling of employees. Moreover, it will allow for the accumulation of the data required under Regulation S-X. Even if the Commission does not provide additional time before the compliance dates for all of the new proposed requirements, at the very least, the SEC should provide additional phase-in time for Regulation S-X requirements and GHG emissions reporting disclosures as these will take the most time for companies to comply with. In addition, the SEC should phase in attestation requirements to allow for a sufficient market of GHG attestation providers to develop, and once phased in, require only limited assurance attestation.

IX. Governance and Internal Decision-Making Disclosures

While the practical challenges of calculating and disclosing the emissions and financial data required under the Proposed Rule cause Energy Transfer the greatest short-term concerns, we note that the extensive and novel disclosures regarding board oversight, management, and internal decision-making around climate issues that the Commission proposes to require are also concerning. These new disclosures create a real risk that companies with diverse operations like Energy Transfer will be forced to emphasize climate-related issues to the detriment of other issues more fundamental to the business and ultimately the interests of the investors. While the disclosure requirements around board and management climate-related expertise and decision-making are dressed up as mere disclosure requirements, the aim and practical effect are clear: By requiring extensive annual disclosures on one particular topic, the Commission is necessarily highlighting it above other issues relevant to good governance and effective operations and ensuring that all public companies will pay particular attention to climate-related issues. While the Commission may believe that this end result will be good as a general policy matter, it does not benefit investors when companies place an outsized emphasis on a particular aspect of the business. Although this level of focus on climate-related issues may be appropriate for some businesses, it will not be universally true and the Commission's one-size-fits-all approach removes the flexibility that registrants like Energy Transfer need to run their large and diverse operations.

As one example of the potential problems with the Proposed Rule's disclosure requirements, companies will be required to disclose information regarding "[w]hether any member of the board of directors has expertise in climate-related risks."⁷⁶ Even assuming this is only a disclosure requirement, it will have the practical effect of pressuring many companies to have a climate-expert board member. What is couched as a disclosure requirement is really a dictate about the manner in which a company is managed. This requirement is all the more problematic given the subjectivity of determining whether a particular board member satisfies this standard and the absence of a large quantity of "qualified" individuals with the requisite "climate-related expertise" to fill board positions of all the companies subject to the Proposed Rule.

For a company with the size and diversity of Energy Transfer, climate is just one of the many areas of expertise in which an individual would need to be qualified to serve on the board. Energy Transfer's ten-member board includes experts on various subsidiary parts of our core business. For example, our directors include a former president of the company's Midstream division; an individual with particular expertise in NGLs; an individual who also serves (or has served) on the boards of Sunoco and USAC; and an attorney with expertise in energy-related finance and mergers and acquisitions. Our board also includes independent directors with significant experience and expertise in other fields and endeavors (such as former Texas Governor Rick Perry). Each of Energy Transfer's board members adds significant value. We have serious concerns that the Proposed Rule will remove or impair the company's flexibility to

⁷⁶ See 87 Fed. Reg. at 21,467 (proposed 17 C.F.R. § 299.1501(a)).

select (or maintain) the right board members for the job, potentially elevating climate-related expertise over other business considerations in order to comply with the Proposed Rule. The board of a company is responsible for overseeing all aspects of the business, and the Proposed Rule—focused on climate as it is—ensures the overemphasis on one particular aspect of operations, thereby skewing the focus of boards. This could detrimentally impact the company and, ultimately, its unitholders.

The Proposed Rule also requires the disclosure of information relating to the internal decision-making of the board (and management) around climate issues. Specifically, the Proposed Rule seeks information as to how the board considers climate-related information as part of its business strategy, risk management, and financial oversight and the processes by which the board discusses climate-related risks. General disclosure of the board’s role in risk oversight is already required by existing rules. Compelling further information as to the company’s internal decision-making regarding climate-related risks (and climate-related opportunities) may undermine the Commission’s climate-related goals by causing companies to avoid engaging in transition planning or undertaking scenario analyses out of fear that doing so will create new disclosure requirements. When companies know that any internal considerations or changes in policy will be subject to disclosure requirements, they will necessarily become more cautious and scripted in discussing these items. Alternatively, they could cause the company to elevate climate-related issues above other business considerations and thus harm the overall business (and therefore investors).

Energy Transfer recommends that the Commission remove or limit the prescriptive disclosure requirements related to a registrant’s internal management, reporting, and decision-making around climate-related issues, including by:

1. Clarifying in any final rule that a board member with climate-related expertise is not required, as such a requirement may be beyond the legal authority of the Commission. The SEC should also abandon its proposal to require disclosure of whether any board member “has expertise in climate-related risks.” To the extent that the SEC retains this requirement, it should clarify that such expertise can be acquired through board education, and it should provide appropriate guidance on what kinds of training would be necessary.
2. Removing the requirements for disclosure of internal decision-making. Alternatively, the SEC should require such disclosures only when a company has otherwise publicly disclosed such information, and only to the extent they have done so without additional information about internal processes or decision-making.

Conclusion

Energy Transfer appreciates the opportunity to comment on the Proposed Rule. While we support the Commission’s goal of providing investors with decision-useful information, we

believe that the prescriptive one-size-fits-all approach to climate information taken by the Proposed Rule will not further this goal, and will instead inundate investors with non-material data at a great cost to registrants. We thank the Commission for its consideration of our views on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Tom Mason". The signature is written in a cursive, slightly slanted style.

Thomas P. Mason
Executive VP, General Counsel
& President-LNG, of Energy Transfer LP

**REPORTING SCOPE 3 GREENHOUSE GAS
EMISSIONS UNDER THE SEC PROPOSED RULES:
TECHNICAL CHALLENGES AND HURDLES FOR THE
MIDSTREAM INDUSTRY**

**PREPARED FOR:
Energy Transfer, LP**

SLR Ref: 120.01094.00037

June 13, 2022

BACKGROUND

The Securities and Exchange Commission (SEC) has proposed rule changes that would require registrants to disclose greenhouse gas (GHG) emissions in their registration statements and periodic reports. The proposed rules would require a registrant to disclose its direct GHG emissions (Scope 1), indirect emissions from purchased electricity, steam, heating, or cooling (Scope 2), and material GHG emissions from upstream and downstream activities in its value chain (Scope 3). The stated intent of the proposed rule is to “enhance and standardize” GHG emission disclosures to better meet investor demand while enabling issuers to produce such disclosures more “efficiently and effectively.”

The GHG emission disclosure provisions of the SEC proposed rules present certain challenges and hurdles for the Midstream Industry, particularly in regard to disclosure of Scope 3 emissions. The purpose of this paper is to identify and evaluate the technical challenges and hurdles the industry will face should the Scope 3 disclosure provisions of the proposed rules be enacted.

SLR International Corporation (SLR) is an environmental consultancy experienced in the calculation of GHG emissions from the oil and gas industry. This paper was prepared by SLR technical consultants and is intended only to identify technical issues related to the disclosure of Scope 3 emissions. This paper is not intended to provide legal advice which is outside SLR’s field of expertise.

SEC PROPOSED RULES FOR GHG EMISSIONS DISCLOSURE

The SEC proposed rules require registrants to separately disclose Scope 1 and Scope 2 GHG emissions, expressed both by disaggregated constituent greenhouse gases and in the aggregate. Scopes 1 and 2 emissions shall be disclosed in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production). Scope 3 emissions must be disclosed if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity. If an Accelerated or Large Accelerated filer, the registrant must also obtain an attestation report from an independent attestation service provider covering, at a minimum, Scopes 1 and 2 emissions disclosure.

The proposed rules provide a phase-in period for disclosure of Scopes 1 and 2 GHG emissions, with the compliance date dependent on the registrant’s filer status. There is a separate phase-in period for Scope 3 GHG emissions disclosure. Disclosure could be required by Large Accelerated Filers for FY 2023 Scopes 1 and 2 GHG emissions. Accelerated Filers and Non-Accelerated Filers would be required to report FY 2024 Scopes 1 and 2 GHG emissions. This assumes the rules are adopted by December 2022 and the company’s fiscal year ends in December. Large Accelerated Filers and Accelerated Filers would be required to obtain and file a Limited Assurance attestation report from an independent attestation service provider with their initial and second disclosures of Scopes 1 and 2 GHG emissions. A Reasonable Assurance attestation would be provided for Scopes 1 and 2 GHG emissions no later than two years following the filing of the first Limited Assurance attestation.

Disclosure of Scope 3 GHG emissions would be required one year after the first disclosure of Scopes 1 and 2 emissions is filed. There is no specific attestation requirement covering Scope 3 emissions. The proposed rules provide a safe harbor for liability for Scope 3 GHG emissions disclosure and forward looking statement safe harbors pursuant to the Private Securities Litigation Reform Act, to the extent that proposed disclosures would include forward-looking statements.

ANALYSIS OF SCOPE 3 GHG EMISSIONS REPORTING

A detailed analysis of the major challenges and hurdles associated with disclosure of Scope 3 GHG emissions by the Midstream oil and gas industry is presented in the attached. The analyses revealed four challenge themes related to disclosing Scope 3 GHG emissions by Midstream oil and gas companies:

1. **Boundaries of Scope 3 Emissions:** Midstream oil and gas companies will have significant challenges in, and varying approaches to determining the extent of emissions to be quantified as Scope 3. Large volumes of oil and gas materials transported by Midstream oil and gas companies are not purchased by the Midstream company. However, many Midstream companies transport both materials owned by third parties, and smaller amounts of materials purchased from the upstream producers or gathers that are eventually sold. Furthermore, some Midstream oil and gas companies perform other activities involving treating and storage of materials both purchased and eventually sold, and materials not purchased. The bifurcation surrounding activities within the same systems for materials purchased as well as not purchased, will make determining and reporting upstream and downstream Scope 3 emissions very challenging, resulting in emissions largely based on assumptions and estimates. Additionally, boundary-related issues resulting in information that will not be comparable, arise when Midstream companies consider the upstream reach of their Scope 3 estimates, as well as which individual GHG's to report as "material".
2. **Availability of Data:** There are significant issues regarding the availability of data to inform the quantification of GHG emissions from activities upstream and downstream of Midstream oil and gas companies. Notably, on the side of the supplier, there is a general lack of GHG emissions data from small and diverse upstream and downstream companies, many of which are not required to calculate GHG emissions under existing regulatory regimes. Many of the smaller upstream companies have limited or no GHG emissions information, and much of the available data they have developed is unreliable or incomplete. Similarly, the diversity of downstream entities poses a considerable challenge simply in terms of the amount of data to be collected, as well as the challenges associated with obtaining data from certain entities that have never determined their GHG emissions. Also, within Midstream oil and gas companies, there are notable challenges regarding the availability of data. In particular, a complete accounting of all suppliers for materials to support a Midstream company's activities across their entire system is lacking. Similarly, Midstream companies face challenges in the limited data on the end of life use for all products transported through a company's systems.

These information gaps will inevitably lead to estimating exercises which generally will not produce meaningful, comparative results for the reasonable investor. Moreover, there is currently no consistent, accepted definition of the boundaries of the activities upstream and

downstream of Midstream oil and gas companies, which will inevitably lead to significant variations in the sources and quantities of Scope 3 GHG emissions.

3. **Systems and Processes:** There are insufficient implemented, formalized systems for collecting GHG emissions data and tracking purchased materials and suppliers across a Midstream company's value chain (upstream and downstream). Some GHG emissions data may be available on various government databases, but even that data is not consolidated in a single database. In addition, the technical complexity of completing these GHG emissions calculations is significant, which results in a high potential for errors and omissions. Beyond these databases, there is no mechanism other than outreach to individual suppliers and customers to reliably obtain this data. Since each supplier and customer could receive hundreds or thousands of such requests, this approach to data collection would not likely prove to be feasible. Moreover, the creation of a centralized database and inclusion of required GHG emissions data in such a database is not likely to be feasible to support disclosures of 2024 or 2025 Scope 3 GHG emissions of the Midstream oil and gas industry.
4. **Methodology:** The lack of prescribed, industry-specific methodologies to determine Scope 3 GHG emissions and the limited reach of existing rules requiring the quantification and reporting of Scopes 1 and 2 emissions poses significant challenges to Midstream companies. Prescribed methodologies that would normalize reported Scope 3 GHG emissions are not outlined in the proposed rule. For a reasonable investor to meaningfully use Scope 3 emissions information to inform their decisions, all reported data would need to be produced from prescriptive methodologies that outline the scope (target GHGs), the boundaries (the extent of the analysis), and where applicable, the procedures for estimating and quantifying the Scope 3 emissions for each industry segment. A review of currently available methods yields a wide range of suggested approaches. Moreover, due to the limited reach of existing programs requiring a broad range of companies to quantify and report Scope 1 and 2 GHG emissions, the data reported by Midstream company suppliers would be little more than high level with limited technical credibility or sophistication. In addition, significant technical expertise is needed to successfully implement any envisioned and inevitably proposed methodologies for Scope 3 emissions disclosures. The available pool of qualified professionals is most certainly too small to address the demand that would be created if the proposed rule is passed as currently written. By applying these important and scarce technical resources to the development and implementation of Scope 3 methodologies, the already scarce technical resources that can be deployed to address Scopes 1 and 2 GHG emissions will be reduced even further. Given the current state of GHG calculation methodologies, the development of any accepted and reliable methodology for calculating Scope 3 emissions is most certainly a multi-year endeavor which is unlikely to be completed early enough to enable disclosure of 2024 or 2025 Scope 3 GHG emissions of the Midstream oil and gas industry.

Further technical information to support this analysis are provided in the attached table.

CONCLUSIONS

The SEC proposed rule is intended to provide "consistent, comparable, and reliable – and therefore decision-useful – information to investors to enable them to make informed judgements about the impact of climate-related risks on current and potential investments." This cannot be achieved for Scope 3 GHG emissions without extensive and rapid investment in new calculation methodologies to develop complete and reliable data, supported by effective data systems that enable efficient data collection and distribution. It is SLR's opinion that this could not be accomplished to meet the disclosure and assurance timelines presented in the currently proposed rule.

Given the current state of GHG calculations, the SEC proposed rule would require Scope 3 GHG emissions data with low verifiability to be reported in multiple SEC filings that have heretofore been viewed as credible. If the proposed rule seeks to create a process that will yield information with the same level of completeness and reliability, a consistent definition of materiality and standard methodologies will be needed. While the SEC proposed rule includes safe harbor provisions for Scope 3 GHG emissions, this does not preclude the use of such data for making significant business decisions. In fact, this is one of the noted purposes of the proposed rule. With no accepted Scope 3 boundary definition, any use of Scope 3 GHG emissions by investors would be questionable. Given that "investors often employ diversified strategies, and therefore do not necessarily consider risk and return of a particular security in isolation but also in terms of the security's effect on the portfolio as a whole, which requires comparable data across registrants," the lack-of consistent methodologies and boundaries in the proposed rule could potentially create a market imperfection by having reasonable investors assume disclosed Scope 3 GHG emissions are complete and accurate since that data is reported in the same way as assured financial data. It is also questionable whether any third-party agency can provide limited or reasonable assurance of Scope 3 GHG emissions given the lack of credible, accepted methodologies.

ATTACHMENT

DETAILED ANALYSIS TABLE

**Reporting Scope 3 Greenhouse Gas Emissions Under the SEC
Proposed Rules: Challenges and Hurdles for the Midstream**

Challenge/Hurdle	Challenge Narrative	Boundaries	Availability of Data	Systems & Processes	Methodology
Boundaries	The lack of Scope 3 GHG emissions boundaries for each industry segment will lead Midstream companies to report Scope 3 GHG emissions representing varying “reach” upstream and downstream. One company’s Scope 3 emissions may include a step out of three degrees for all upstream and downstream entities, where another company may include only one degree of step out. The result will be reported Scope 3 GHG emissions that are not consistent or comparable. This will not provide investors the ability to estimate relative risk.	X			X
Boundaries	Without clearly defined boundaries for determining Scope 3, organizations could double count emissions due to an involvement at multiple points in the lifecycle of a product.	X	X		
Boundary	The complex ownership of materials being gathered, treated, and transported throughout a Midstream company’s system would pose a challenge in determining Scope 3 GHG emissions. For example, would a fee-based contract to gather and/or, treat, and/or deliver (not purchase) an upstream producer’s natural gas trigger the midstream company to include GHG emissions from the upstream producer as Scope 3? This would be analogous to FedEx being required to include the Scope 1 and 2 emissions of Walmart as Scope 3 emissions, because they have a contract for drop shipping goods from warehouses across the country.	X		X	
Supply Chain Inventory	A complete understanding of a company’s supply requirements and associated suppliers will be key to quantifying GHG upstream emissions. Many companies are just beginning to understand the complete list of materials and associated suppliers to conduct their business activities. Industries, like midstream oil and gas, with complex activities and large continental footprints will find it challenging to develop a complete roster of suppliers.		X	X	
GHG Sophistication of Upstream Suppliers	There will be varying degrees of sophistication in upstream suppliers and downstream users in terms of quantified Scope 1 GHG emissions. Not all upstream suppliers will have the advantage of quantifying Scope 1 emissions for several years under a regulatory program. Not all suppliers of a registrant will be recorded with the same diligence. Assuming a start day of January 1, 2023, some suppliers will need several years just to begin providing reliable and repeatable estimates of Scope 1 emissions that can be reported to downstream customers. In other words, the quality (accuracy and repeatability) of Scope 3 emissions reported by a Midstream operator will likely, for a time, be highly variable from year to year due in part to the lack of supplier experience to quantify such data.		X	X	

Challenge/Hurdle	Challenge Narrative	Boundaries	Availability of Data	Systems & Processes	Methodology
Limitations in Suppliers and contractors.	Midstream companies have facilities which are in rural or “small town” areas with limited choices for suppliers, contractors, and distributors. If a registrant does not have access to a different supplier or contractor, then the Midstream owner/operator is faced with expending resources “working with existing suppliers” to first quantify the emissions (see previous comment), and then reduce the supplier’s Scope 1 emissions. Additionally, the drive to reduce Scope 3 emissions before the suppliers have time to react may force a trend toward the development of monopolies and negative social impacts to the smaller communities.		X	X	
Materiality Paradox	The SEC rule does not propose a quantitative threshold for determining materiality. Since the goal of the Commission is to provide a “single standard of materiality, decision-useful ESG information, as relevant to each issuer, and based upon data that issuers already use to make their business decisions”, we cannot proceed with a materiality definition that does not capture industry-specific Scope 3 boundaries. Technically, to identify Scope 3 GHG emissions that are not material, Midstream operators will have to first conduct an analysis across their entire value chain. The SEC claims that the rule balances the “importance of Scope 3 GHG emissions with the potential relative difficulty in data collection and measurement” by requiring only “material” Scope 3 emissions be reported. This does not reduce the burden on the registrant, as the registrant must first collect data to quantify Scope 3 GHG emissions for each category before it is possible to eliminate non-material categories. Furthermore, the definition of “material” (“if there is a substantial likelihood that a reasonable investor would consider them important when making an investment or voting decision”) is so broad that Scope 3 GHG emissions for virtually all sources may have the potential of being material and consequently will have to be quantified.		X		X
Boundaries	Without defined boundaries and target GHGs to report for specific industries, midstream companies will be required to attempt quantification of all subject GHGs (Kyoto Protocol 1992) even if they are not material. One non-material GHG for this industry is sulfur hexafluoride (SF6). If the Midstream industry does not report emissions for these non-material GHGs, it may lead a reasonable investor to form a negative view of the Midstream company.	X	X		X
Materiality Paradox	Quantifying Scope 3 per the GHG Protocol may not fully capture climate risk. Given the current lack of guidance on Scope 3 GHG emissions boundaries and materiality determinations, many Midstream companies may potentially default to using industry guidance, such as that provided by IPIECA. By limiting Scope 3 GHG to IPIECA’s category descriptions, such as their boundary considerations and relationship understanding between Category 4 and Category 11, a Midstream company may or may not meet the intent of the SEC proposed rule.				X

Challenge/Hurdle	Challenge Narrative	Boundaries	Availability of Data	Systems & Processes	Methodology
Firm/Investor Behavior	The compressed timeframe outlined in the SEC rule would present a significant challenge to capturing and reporting a meaningful evaluation and estimate of Scope 3 GHG emissions for Midstream companies. Drawing from the track and timeline used for the EPA's Greenhouse Gas Mandatory Reporting Rule (MRR), drafts were circulated and commented on several years prior to the finalization of the rule in 2010. For many industries (Midstream included) that rule moved companies to invest significant resources to developing internal processes and data systems to estimate their Scope 1 GHGs. Complex industries like the Midstream sector are still refining their Scope 1 emission estimates. Since 2010, the MRR has undergone thirty-two (32) rulemaking revisions. We envision the challenges associated with rulemaking and estimating Scope 3 GHG emissions to be even more significant, requiring far more time to develop and implement a workable rule.			X	X
Inherent Inaccuracies	Many existing regulatory and reporting programs rely on estimates or are incomplete, which will add inherent inaccuracies to Scope 3 GHG estimates for Midstream operators. Midstream operators will have little control over filling any known gaps. For example, calculating emissions from waste (Category 5) can be either through service level frequencies or actual tonnage. Gathering data for service level frequencies assumes the same amount of waste is generated each time there is a waste pick- up event. Measurement rules for actual tonnage have not been established in which case data from a truck driver eyeing how full their lorry is viewed to be just as valuable as data collected from a truck with a scale. Additionally, EPA's GHGRP for the oil and gas production segment does not require reporting of emissions from external fuel combustion sources with a rated heat capacity equal to or less than 5 MMBtu/hr , making their Scope 1 emissions incomplete.		X		X
Assurance Requirements	Although no specific attestation exemption is currently proposed for Scope 3 GHG emissions disclosures, SEC has requested comments concerning such requirements to obtain third party limited assurance attestation for Scope 3 GHG emission disclosures. In the event these attestation requirements are extended to Scope 3 GHG emissions, the time available to produce high-quality Scope 3 GHG emissions that would stand the scrutiny of a third-party reviewer is short. This situation could create pressure to over-estimate the quality of data collected for Scope 3 GHG emissions.	X	X	X	X