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Submitted Via rule-comments@sec.gov

Subject: Nuclear Energy Institute's Comments in Response to the SEC's Proposed Rulemaking on the Enhancement and Standardization of Climate-Related Disclosures for Investors

On behalf of its members, the Nuclear Energy Institute (NEI) submits these comments in response to the U.S. Securities and Exchange Commission's (SEC) April 11, 2022, proposed rulemaking on climate-related disclosures for investors.[1] As the trade association for the commercial nuclear technologies industry, NEI seeks to promote the peaceful use of nuclear energy and technologies through optimal industry performance, effective policies, and efficient regulation.[2] We believe that preserving and expanding nuclear generation is vital to meeting U.S. and global clean energy goals and mitigating the most serious effects of climate change. As an industry, we also believe that investors, as well as all other stakeholders, should have sufficient information to effectively assess the role of nuclear technologies in investments addressing climate-related concerns. Thus, we support the Proposed Rule's overarching purpose of ensuring the disclosure of "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."[3]

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1 *See* Enhancement and Standardization of Climate-Related Disclosures for Investors; Proposed Rule, 87 Fed. Reg 21334 (Apr. 11, 2022) (Proposed Rule). On May 12, 2022, the SEC extended the deadline for comments on the Proposed Rule to June 17, 2022. *See* 87 Fed. Reg. 29059 (May 12, 2022).

2 NEI has hundreds of members, many of which licenses or other authorizations issued by the Nuclear Regulatory Commission (NRC) and NRC Agreement States. Our membership includes companies licensed to own or operate commercial nuclear power plants in the United States, as well as nuclear plant designers, major architectural and engineering firms, entities that process nuclear fuel, and other organizations involved in the nuclear industry.

3 Proposed Rule, 87 Fed. Reg. at 21335.

The Proposed Rule would require U.S. public companies and foreign private issuers to substantially expand the scope, specificity, and rigor of climate-related disclosures in their SEC periodic reports and registration statements. Key provisions of the Proposed Rule include:

- disclosure of greenhouse gas (GHG) emissions (in absolute terms, not including offsets, and in terms of intensity in relation to business scale) for Scope 1, Scope 2, and Scope 3 GHG emissions (if material or if a company has set targets or goals that include Scope 3 emissions) and third-party attestation for Scope 1 and Scope 2 GHG emissions disclosures;
- disclosure of any climate transition plan, internal carbon price, climate-related targets or goals adopted by a company, and progress against such plan, targets and goals;
- disclosure of climate-related risks over the short, medium and long term and their impacts on business activities;
- disclosure of qualitative and quantitative climate risk and historical impact in the notes to a company's audited financial statements (with information required to be presented on a disaggregated basis if the aggregated impact is 1% or more of the total line item); and
- disclosure of corporate governance of climate-related risks and risk management processes.

In Section I below, we provide factual context for our comments. In Section II, we elaborate on the five targeted revisions we recommend be included in the Rule. They are to:

- use inclusive, technology-neutral language when referring to carbon-free energy sources (as opposed to referring primarily to "renewable energy" or "renewable power");
- allow registrants to credit the climate mitigation value of additional market-based products like 24/7 Carbon-Free Energy (which includes nuclear energy);
- define or otherwise clarify what is meant by the "short, medium, and long-term time horizons" that registrants must use for climate-related impact and risk reporting;
- provide guidance on when registrants should use market-based, location-based, or both methodologies for scope 2 emission reporting; and
- treat climate-related reporting requirements as furnished rather than filed.

Our comments are principally intended to ensure that the SEC's final rule is technology-neutral, such that its climate-related financial statement metrics will be applied consistently across all technology options to allow all clean energy technologies to be fairly evaluated for the value they produce. Consistent with the SEC's own objectives, our comments also seek to promote more consistent, comparable, and reliable climate-related disclosures by all registrants. We believe a common set of disclosure standards applied across public companies and technologies will increase transparency for investors and enable a more comprehensive view of the investments required to achieve a net-zero economy. This, in turn, will better position investors to act on the growing recognition of the nuclear sector as ESG-investable, allocating financial resources to investment in

energy generation sources that scientists and policymakers agree are needed to meet climate change mitigation targets.

I. FACTUAL BACKGROUND

A. The Role of Nuclear Energy in Meeting Climate-Related Goals

Governments and scientific experts around the world have identified climate change as a global emergency and an existential threat. The latest United Nations (UN) Intergovernmental Panel on Climate Change (IPCC) report concludes that because climate change is widespread, rapid, and intensifying, strong, rapid, and sustained reductions in greenhouse gas emissions are essential.[4] The International Energy Agency (IEA) has reported that the path to net zero emissions is "narrow" and will require the massive deployment of *all* available clean energy technologies to meet the Paris Agreement emissions reductions targets that the world presently is not on track to meet.[5]

The United States and many other nations thus are pursuing ambitious climate-change goals, including achieving net greenhouse gas neutrality. Preserving and expanding nuclear generation is vital to meeting those goals and mitigating the most serious effects of climate change. Indeed, nuclear energy already has made, and continues to make, important contributions to emissions reductions. Nuclear energy produces around half of carbon-free electricity generation in the U.S. and 29% of clean energy globally.[6] In 2020 alone, U.S. nuclear-generated electricity avoided approximately 470 million metric tons of carbon dioxide emissions that would otherwise have come from fossil fuels.[7] To put this into perspective, for seven decades, the U.S. nuclear fleet has provided nearly 30 billion megawatt hours of reliable, carbon-free electricity, which is enough electricity to power every home in the U.S. for 20 years. Globally, the world's more than 440 nuclear plants displace 1.6 gigatons of carbon dioxide annually, and since 1971 have displaced 66 gigatons of carbon dioxide – the equivalent of two years of global emissions.[8]

As the Organisation for Economic Co-operation and Development's (OECD) Nuclear Energy Agency (NEA) noted in report issued last month, "[a]ll credible models show that nuclear energy

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[4] IPCC, *Climate Change 2021: The Physical Science Basis.* Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Aug. 2021), https://www.ipcc.ch/report/ar6/wg1/.

[5] IEA, *Net Zero by 2050: A Roadmap for the Global Energy Sector* (May 2021), www.iea.org/reports/ net-zero-by-2050.

[6] IEA, *Nuclear Power in a Clean Energy System* (May 2019), https://www.iea.org/reports/nuclear-power-in-a-clean-energy-system; U.S. Energy Information Administration, "Electric Power Monthly ES1.B" https://www.eia.gov/electricity/monthly/.

[7] NEI, "Annual Greenhouse Gas Emissions Avoided by the U.S. Nuclear Power Plants," https://www nei.org/resources/statistics/emissions-avoided-by-us-nuclear-industry. Nuclear energy also has one of the lowest life-cycle carbon emission rates of all generation technologies, even when accounting for indirect emissions associated with the mining of fuel and plant construction. *See* International Atomic Energy Agency, *Nuclear Power and Sustainable Development*, at 50-51 (2016), http://www-pub.iaea.org/MTCD/Publications/PDF/Pub1754web-26894285.pdf. Life-cycle assessments consider impacts related to operation, and the generation source's "construction and decommissioning as well as the fuel cycle"—*i.e.*, from "cradle to grave." *See id.* at 5, 38.

[8] IEA, *Nuclear Power in a Clean Energy System* (2020), https://www.iea.org/reports/nuclear-power-in-a-clean-energy-system.

has an important role to play in global climate change mitigation efforts."[9] Modeling by climate experts consistently demonstrates that the most reliable, affordable low-carbon energy system requires an increase in nuclear generation globally alongside increases in wind, solar and battery storage.[10] The NEA report concludes that nuclear energy can support future climate change mitigation efforts in various ways, including via the long-term operation of presently-installed nuclear generation capacity and potential large-scale Generation III nuclear new builds to provide non-emitting electricity in current and prospective nuclear power jurisdictions.[11] As the NEA report highlights, the global industry's work to commercialize numerous advanced nuclear reactor designs (including small modular reactors, or SMRs) this decade will greatly expand nuclear energy's ability to reduce carbon emissions from the energy supply.[12] In addition to producing electricity, these technologies will support hybrid energy systems and applications including, but not limited to, sector coupling, combined heat and power (cogeneration) for heavy industry and resource extraction, hydrogen and synthetic fuel production, desalination, and off-grid applications.[13]

Consistent with the NEA's findings, the U.S. Department of Energy (DOE) has stated unequivocally that nuclear energy will "play a role in the transition to a clean energy economy by fundamentally enabling our nation's targets for clean, carbon-free electricity as well as non-electric energy markets," giving us "the potential to decarbonize many industrial sectors in the United States and abroad."[14] In combination with wind, solar, hydro and energy storage, nuclear energy provides a reliable, sustainable and cost-effective decarbonization pathway for global energy systems.[15] The current fleet of nuclear reactors is the backbone of our current clean energy generation, and newly-deployed advanced reactors will provide the foundation for a net zero-carbon future.

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[9] OECD-NEA, *Meeting Climate Change Targets: The Role of Nuclear Energy* (May 2022) (NEA Report), https://www.oecd-nea.org/jcms/pl_69396/meeting-climate-change-targets-the-role-of-nuclear-energy.

[10] For example, in its roadmap for reaching a net-zero emissions energy system by 2050, the IEA concluded that use of nuclear energy must nearly double alongside the expanded use of other carbon-free technologies. *See* IEA, *Net Zero by 2050: A Roadmap for the Global Energy Sector*, at 57 (May 2021), https://www.iea.org/reports/net-zero-by-2050.

[11] NEA Report at 7, 16.

[12] *See id.* at 7, 16-17, 22-28.

[13] *See id.* at 7,8, 22, 28-32.

[14] DOE, Office of Nuclear Energy, "Q&A: Acting Assistant Secretary Dr. Kathryn Huff Shares Her Vision for the Future of Nuclear Energy" (June 24, 2021), https://www.energy.gov/ne/articles/qa-acting-assistant-secretary-dr-kathryn-huff-shares-her-vision-future-nuclear-energy.

[15] In a recent study performed for DOE, Idaho National Laboratory (INL) investigated the role of advanced nuclear in supporting a net-zero economy. *See* INL, *Estimated HALEU Requirements for Advanced Reactors to Support a Net-Zero Emissions Economy by 2050* (Dec. 2021), https://www.osti.gov/biblio/1838156. The INL analysis used a Global Change Analysis Model to assess the U.S. electricity generation capacity consistent with achieving economy-wide net-zero emissions by 2050 utilizing wind, solar, hydro, nuclear, and fossil with carbon capture and sequestration. In the analysis, the total electricity demand nearly doubled and nuclear generating capacity was shown to increase by more than 150 percent.

B. The Growing Recognition of Nuclear as an ESG-Investable Asset

In addition to providing 24/7 carbon-free energy,[16] nuclear power has other significant environmental and socioeconomic benefits. Unlike fossil fuel plants, nuclear plants do not emit harmful air pollutants like sulfur oxides, nitrogen oxides, and mercury.[17] Further, due to their high energy density, nuclear plants have much smaller geographic footprints than other clean energy generation sources, including wind, solar, and hydropower.[18] As a result, nuclear power avoids adverse climate change, air quality, human health, land use, and ecological impacts that disproportionately affect vulnerable communities. Nuclear plants also provide socioeconomic benefits to local communities. The U.S. nuclear power industry supports almost half a million jobs and contributes an estimated $60 billion to the U.S. GDP and more than $12 billion in local, state, and federal tax revenue each year. Nuclear power plants strengthen economies through jobs, taxes, and direct and secondary spending, and funding for schools, roads, and infrastructure projects.[19]

For these reasons, nuclear energy increasingly is being recognized as an ESG-investable asset class. For example, in a June 2021 report, Barclays concluded that "[g]iven the scale of the challenge to transform the global generation mix, it is likely that nuclear will have to play a more important role in certain power markets, especially where there is clear and adequate government support."[20] It further noted that "nuclear could form the base load generation necessary to enable the safe, reliable, affordable decarbonised grid [ESG] investors are pushing for." In an April 2022 report, Morgan Stanley emphasized that "[n]uclear is carbon free, more reliable than other renewables, and possesses a strong safety track record," and similarly concluded that "[g]iven the challenges of achieving 'net zero' through our current global energy mix, we expect nuclear to become a more favored alternative and play a key role in coordinated global energy transition."[21]

The Generation IV International Forum (GIF) issued a report last year that establishes how nuclear energy, as an asset class, has the potential to report well against a wide range of ESG metrics. The report "highlights the importance of *wide ranging, consistent and standardised ESG reporting to determine the credentials of all energy companies across their lifecycles and throughout their supply chains*."[22] The report reaches two notable conclusions. One is that "[n]uclear energy, in

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[16] With a more than 90 average percent capacity factor sustained throughout the past two decades, nuclear energy boasts the highest capacity factor of any energy generation technology.

[17] NEI, "Air Quality," https://www.nei.org/advantages/air-quality.

[18] Nuclear power has the smallest overall environmental footprint of any energy source, using roughly 50 to 500-times less space for energy production than wind and solar. *See* LucidCatalyst, *Beautiful Nuclear* (June 2022), https://www.lucidcatalyst.com/beautifulnucleardrivingdeepdecarbonisation.

[19] Nuclear Matters, "Jobs," https://www.nuclearmatters.com/jobs.

[20] Barclays, *Nuclear for a decarbonised future* (June 2021), http://uraniumequities.com/uranium-reports/2021/06/Barclays-Global-Nuclear-2-June-2021-Nuclear-for-a-decarbonized-future.pdf.

[21] Morgan Stanley, T*he Nuclear Revival: Embracing a Clean, Reliable and Safe Source of Energy* (Apr. 2022), https://www morganstanley.com/im/en-us/individual-investor/insights/articles/the-nuclear-revival-embracing-a-clean-reliable-safe-source-of-energy html.

[22] Generation IV International Forum, *Nuclear Energy: An ESG Investable Asset Class*, at 11 (Sept. 2021) (GIF Report) (emphasis added), https://www.gen-4.org/gif/jcms/c_179256/gif-final-esg-010921. A report by the Expert Group on Resource Management of the UN Economic Commission for Europe (UNECE) similarly describes how

combination with renewables, is the only way for countries to meet their nationally determined contributions (NDC) under the Paris Agreement and their Net-Zero commitments."[23] The other is that "[t]he investment community has an obligation to ask companies to *report in consistent ways* to provide nuclear the opportunity of accessing climate finance and making nuclear an investable asset class."[24]

II. SPECIFIC COMMENTS ON THE PROPOSED CLIMATE DISCLOSURES RULE

Despite its proven environmental and economic benefits, nuclear energy often has been excluded from public and political discourse. For that reason, the NEA's recent report urges governments to "break the silence on nuclear energy in policy discussions about clean energy and climate change, raising the profile of nuclear energy alongside other non-emitting energy technologies" to ensure that its role in decarbonization is appropriately recognized.[25] As the NEA report further explains:

> Energy innovation, development and deployment policies should be technology-neutral and structured to incentivise desired outcomes, such as emissions reductions and security of energy supply. This includes taxonomies, as well as criteria for access to climate finance, development finance, and Environmental Social and Governance (ESG) finance. Labels and categorisation matter, as they are expected to influence and direct the flow of financing for years to come. *Metrics should be applied consistently with similar levels of scrutiny across technology options, to allow technologies to compete on equal footing. In this way, efficiency is best achieved with technology-neutral policies and criteria*.[26]

Although the SEC is not responsible for formulating national energy policy, selecting specific electrical generation technologies, or regulating U.S. energy markets, it does have "broad authority to promulgate disclosure rules that are in the public interest or for the protection of investors and that promote efficiency, competition, and capital formation."[27] The SEC should exercise this authority to ensure that investors are able to "make comparable assessments of how companies are evaluating and responding to climate-related risks and opportunities,"[28] such that investors and customers alike fully understand the environmental and societal impacts of company decisions.

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nuclear power satisfies the 17 UN sustainable development goals (SDGs). The report concludes: "Nuclear energy is an indispensable tool for achieving the global sustainable development agenda. It has a key role to play in decarbonizing the energy sector but also supports the attainment of all the [SDGs] – including the elimination of poverty, zero hunger, clean water, affordable energy, economic growth, and industry innovation. Improved government policy and public perception along with ongoing innovation will enable nuclear energy to overcome traditional barriers to deployment and expand into new markets." UNECE, *Application of the United Nations Framework Classification for Resources and the United Nations Resource Management System Use of Nuclear Fuel Resources for Development* (2021), https://unece.org/sustainable-energy/publications/nuclear-entry-pathways.

[23] GIF Report at 11.

[24] *Id.* at 15 (emphasis added).

[25] NEA Report at 11, 46

[26] *Id.* at 44 (emphasis added).

[27] Proposed Rule, 87 Fed. Reg. at 21340 (citations omitted).

[28] *Id.* at 21372 (citing letter from Interfaith Center on Corporate Responsibility (June 11, 2021)).

A. Replace "Renewable" with "Clean Energy" to Ensure Technology Inclusivity

The SEC should revise the Proposed Rule to use more inclusive, technology-neutral terminology, consistent with President Biden's Executive Order (E.O.) 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*.[29] E.O. 14057 discusses the need to encourage private sector investment through the development of federal government-wide zero-emissions goals and, in doing so, specifically focuses on the growth of clean energy industries. The SEC's 140-page Proposed Rule mentions E.O. 14057 in a footnote but does not once use the terms "clean energy" or "carbon pollution-free energy" (which E.O. 14057 defines to include nuclear energy). The Proposed Rule also contains only a single, passing reference to nuclear energy, which it lists as a "less carbon-intensive source" along with wind turbines, hydroelectric, and solar power.[30] In contrast, the Proposed Rule refers to "renewable" energy, power, or electricity 26 times (e.g., in connection with climate mitigation strategies and in a section dedicated to renewable energy credits, as used by some registrants).[31] This lopsided focus on renewable energy may signal to registrants that the SEC endorses one form of clean energy over another. By modifying the rule to clarify that all forms of clean energy are included in registrant reporting, the SEC would enable more efficient capital allocation by expanding the scope of technologies registrants can leverage to meet their climate targets and transition plans. Conversely, by overlooking critical clean energy sources like nuclear energy, the Proposed Rule limits disclosure of information about a significant resource that certain SEC registrants already are relying on to meet their climate targets or mitigation plans.

B. Ensure the Final Rule Reflects the Full Breadth of Climate Credit Market Tools

A key component of capital formation in climate investments is the market for "carbon-conscious" energy products. The Proposed Rule takes an important step in requiring companies to disclose the market tools used to achieve climate goals. However, it is incomplete insofar as it does not include all market products that value carbon-free electricity generation. NEI thus urges the SEC to consider the inclusion of all carbon-free products, such as 24/7 Carbon-Free Electricity (CFE), which credits nuclear energy.[32] This emerging product matches hourly carbon-free energy to hourly demand and ensures energy production and consumption are occurring in a reasonably matched geographic area. By following this recommendation, the SEC would create reporting standards for the products that companies use to meet their climate goals to ensure that they are disclosing accurate information

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[29] E.O. 14057, "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability" (Dec. 8, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/.

[30] Proposed Rule, 87 Fed. Reg. at 21354 ("An electric utilities company might disclose an increase in the amount of electricity generated from less carbon-intensive sources, such as wind turbines, nuclear, hydroelectric, or solar power to meet current or likely regulatory constraints.").

[31] *See id.* at 21355; *id.* at 21351 (citing "the increased use of renewables" as an example of a climate-related opportunity).

[32] *See* E.O. 14057 (Section 603(a) defines "24/7 carbon pollution-free electricity" as "carbon pollution-free electricity procured to match actual electricity consumption on an hourly basis and produced within the same regional grid where the energy is consumed").

about meeting their stated targets and that the market is directing funds to technologies that achieve *actual* reductions in emissions.

As a signatory of the United Nations 24/7 Carbon-free Energy Compact, NEI supports efforts to accelerate market adoption of 24/7 CFE products.[33] A 24/7 CFE product enables customers to purchase carbon-free electricity that is hourly matched to their electricity consumption. This enables a market for both intermittent and baseload CFE generation by valuing CFE produced during the hours that are the most difficult to decarbonize. Put another way, customers of 24/7 CFE products know that the electricity they are using is, in fact, carbon-free at all hours of the day and through the year. This structure improves capital allocation by unlocking the value of generation sources capable of producing carbon-free energy during the most difficult hours. It is imperative that we modernize the accounting practice of offsets and credits and ensure that entities purchasing clean energy are indeed receiving clean energy.

The Biden Administration has recognized the importance of establishing a new market approach to procuring carbon-free electricity. E.O. 14057, discussed above, sets a goal of reaching 100 percent carbon-free electricity by 2030, with 50 percent coming from 24/7 carbon-free electricity. Notably, the Department of Defense (DOD) and General Services Administration (GSA) released a joint request for information in February 2022 requesting information on how those agencies can achieve the goals specified in E.O. 14057.[34] While the Federal Government is expected to be largest purchaser of 24/7 CFE, private sector entities have expressed interest in producing or purchasing 24/7 CFE products. Given the need for 24/7 CFE products, the SEC's disclosure rules should allow registrants to credit the climate mitigation value of such products.

The SEC's final rule should list 24/7 CFE products – which include nuclear energy – among the methods that registrants must report as part of their climate-related business strategies (see proposed 17 CFR 229.1502). In addition, the SEC should coordinate with the Administration to ensure that the final rule supports capital deployment where it is most needed for achieving a low-carbon future. NEI further recommends that the SEC explicitly define "24/7 Carbon Free Energy" in 17 CFR 229.1500 (Item 1500) of the final rule. Providing a clear definition of 24/7 CFE would create clarity for investors comparing between company reports and reduce burden on companies evaluating products to meet their climate goals. For reference, E.O. 14057 defines 24/7 carbon pollution-free electricity as "electricity procured to match actual electricity consumption on an hourly basis and produced within the same regional grid where the energy is consumed."

C. Clarify the Meaning of the Short, Medium, and Long-Term Time Horizons

The Proposed Rule would require registrants to disclose climate-related risks that are reasonably likely to have a material impact on the registrant, and which may manifest over various time

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[33] *See* UN, "24/7 Carbon-free Energy Compact," https://www.un.org/en/energy-compacts/page/compact-247-carbon-free-energy.

[34] *See* DOD, "DoD, GSA Announce RFI to Gather Information for Supplying 24/7 Carbon Pollution-Free Electricity for Federal Government" (Feb. 3, 2022), https://www.defense.gov/News/Releases/Release/Article/2921646/dod-gsa-announce-rfi-to-gather-information-for-supplying-247-carbon-pollution-f/.

frames.[35] The SEC notes that it opted not to define the terms short, medium, and long-term in favor of having the registrant define the time horizons to allow for flexibility in reporting.[36] Nevertheless, in the Proposed Rule, the SEC sought comments on this specific issue.

NEI recognizes the need for flexibility but is concerned that allowing each registrant to define its own time horizons, without some SEC-specified parameters or guidance, may not result in consistent, comparable, and reliable climate-related information for investors. That is, investors may find it difficult to compare climate impacts when analyzing registrants' susceptibilities to material climate-related risks over time. Indeed, the SEC acknowledges that determining the likely future impacts of climate-related risks on registrants' businesses may be difficult for the registrants themselves.[37]

To mitigate that difficulty, NEI recommends that the SEC reconsider its current approach and clarify (either in the final rule or in related guidance) how registrants should determine short, medium, and long-term impacts. There are many variables involved in analyzing climate-related risks and their impacts on business activities and operations, with the timeframe for the analysis being a major component. We recommend that the SEC identify short, medium, and long-term time horizons (e.g., as ranges) that are consistent with those already used in established frameworks.[38] For example, many groups, including Climate Action 100+, a group of over 700 investors representing over $68 trillion in assets under management, define short, medium, and long-term impacts as up to 2025, from 2026-2035, and 2036-2050, respectively.[39] NEI believes this approach will provide registrants with sufficient flexibility to accommodate unique factors across sectors while also ensuring that investors have access to consistent, comparable, and reliable climate-related information.

D. Reduce Ambiguity by Clarifying Scope 2 Emissions Reporting Methods

The SEC attempts to address scope 2 emission reporting discrepancies in the Proposed Rule by referencing the TCFD framework and the GHG Protocol. NEI supports the SEC utilizing the TCFD framework and GHG Protocol to drive standardization; however, the draft rule creates ambiguity that will likely inhibit complete and comparable reporting. For example, the draft rule utilizes EPA guidance on reporting Scope 2 emissions but allows registrants to use either the location-based method or the market-based method, as opposed to reporting both as outlined by the EPA.[40] While this deviation from the EPA guidance provides flexibility where using both approaches may not be feasible, it will result in discrepancies among individual company reports. That is, reporting using both methods provides investors with a different picture than using only a location-based or market-based method with the consequence that investors will not be able perform accurate comparisons.

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[35] Proposed Rule, 87 Fed. Reg. at 21345.

[36] *Id.* at 21351.

[37] *Id.* at 21352.

[38] *See id.* at 21352 (Question 8).

[39] Climate Action 100+, https://www.climateaction100.org/about/. /.

[40] Greenhouse Gas Inventory Guidance, Indirect Emissions from Purchased Electricity, EPA, January 16, 2016, at p. 6, https://www.epa.gov/sites/default/files/2016-03/documents/electricityemissions_3_2016.pdf.

Thus, NEI recommends the SEC clarify which reporting methods are required when disclosing scope 2 emissions.

E. Treat Climate-Related Disclosures as Furnished Instead of as Filed

The SEC's Economic Analysis detailed in the Proposed Rule discusses the anticipated costs and compliance burden that will be imposed on registrants seeking to meet the new climate-related disclosure requirements.[41] The analysis makes clear that companies will need to expend significant effort and resources to meet that burden. The SEC also notes that these climate-related disclosures may be new to many registrants, and that those unfamiliar with preparing these disclosures may face significant uncertainties and novel compliance challenges.[42] It further states that the rule's indirect costs may include "heightened litigation risk and the potential disclosure of proprietary information."[43]

Given the agency's own observations regarding the costs, challenges, and risks associated with complying with the Proposed Rule, the SEC should consider ways to mitigate the compliance burden and liability risk for registrants as it develops the final climate-related disclosures rule. Although the Proposed Rule provides phase-in periods, Private Securities Litigation Reform Act (PSLRA) safe harbor protection[44] for forward-looking statements, and limited safe harbor protection for Scope 3 emissions disclosures, those provisions cover only a small set of the data that registrants would be required to disclose. Notably, the SEC acknowledges that the PSLRA safe harbor has important limitations, and that the PSLRA does not limit the SEC's authority to bring an enforcement action on any forward-looking statements.[45]

As now written, the Proposed Rule would treat the required climate-related disclosures as "filed" and subject to liability under the Exchange Act Section 18 and subject to potential Section 11 liability,[46] except for disclosures furnished on Form 6-K. To ensure robust disclosures, NEI believes it is in investors' and registrants' interest to have these filings be furnished rather than filed. The type of information the Proposed Rule is seeking can be speculative and relies on evolving methodologies and third parties. Given the estimates and assumptions inherent in these types of disclosures, allowing registrants to furnish the disclosures will help mitigate potential liability exposure for those seeking to comply. We believe that treating the disclosures as filed may disincentivize registrants from providing more expansive disclosures and compel them to adopt a more conservative approach.

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41 Proposed Rule, 87 Fed. Reg. at 21439.

42 *Id.* at 21443-21444.

43 *Id.*

44 *See* Private Securities Litigation Reform Act (Pub. Law 104-67, 109 Stat 737).

45 Proposed Rule, 87 Fed. Reg. at 21352.

46 Section 18 of the Securities and Exchange Act of 1934 (15 U.S.C. 78r); Section 11 of Securities Act of 1933 (15 U.S.C. 77k).

Accordingly, NEI recommends that all the disclosures under Subpart 1500 of Regulation S-K[47] and proposed Article 14 of Regulation S-X be treated as furnished (in addition to the already as furnished disclosures provided under Form 6-K). If the SEC chooses not to treat the disclosures under the proposed rule as furnished, then NEI strongly recommends that the SEC adopt a more expansive safe harbor to cover all climate-related forward-looking statements.[48] Specifically, NEI recommends the SEC adopt a provision similar to 17 CFR 229.305(d) to apply to all forward-looking statements made in response to climate-related disclosure items (including, but not limited to, disclosures concerning transition plans, targets, and goals).[49]

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NEI appreciates the SEC's efforts to develop a rule that allows investors to obtain decision-useful information and make informed judgments about the impact of climate-related risks on current and potential investments. For the reasons explained above, we believe the SEC's final rule should be technology-neutral and applied in a manner that ensures that the climate-related financial statement metrics are consistent across all technology options, including nuclear power. Thank you in advance for your consideration of NEI's comments. If you have any questions or require additional information, please feel free to contact me at [redacted].

Sincerely,

Ellen C. Ginsberg

Ellen C. Ginsberg

[47] *See* 17 CFR 229.1500-17; 17 CFR 229.1507 (disclosures related to certain climate-related information, including climate-related risks that are reasonably likely to have a material impact on its business or consolidated financial statements and GHG emission metrics that could help investors assess those risks, include an attestation requirement for accelerated filers regarding certain GHG emission metrics disclosures).

[48] *See* 87 Fed. Reg. at 21358 (question 28); 21359 (question 31-32); 21363 (question 51); 21407 (question 174).

[49] *See id.* at 21359 (question 32).