



June 17, 2022

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

**Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors,
RIN 3235—AM87, File Number S7-10-22**

Dear Ms. Countryman:

ASRC Energy Services, LLC (AES) provides energy support services to private and public companies as well as government agencies. AES is a wholly-owned subsidiary of Arctic Slope Regional Corporation (ASRC). ASRC is one of twelve land-owning regional Alaska Native Corporations established pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA).¹ Congress created Alaska Native Corporations and provided for the conveyance to them of certain traditional lands in settlement of Alaska Native aboriginal land claims to provide for the economic, social, and cultural well-being of the Alaska Native people, who became owners of—or shareholders in—the Alaska Native Corporations after ANCSA was enacted.

ASRC's region is the North Slope of Alaska, the northernmost region of the United States. ASRC's shareholders, the Iñupiat of the North Slope, have lived on and subsisted off the resources of the North Slope for over 10,000 years. The North Slope region spans 55 million acres and includes the villages of Point Hope, Point Lay, Wainwright, Atqasuk, Utqiagvik, Nuiqsut, Kaktovik, and Anaktuvuk Pass. The residents of these villages are also residents of the North Slope Borough (Borough), the county-level municipal government for the North Slope region.² The residents of these villages are predominantly Iñupiat, and they comprise many of the approximately 13,000 Alaska Native owners of ASRC.

ASRC holds title to approximately five million acres of land on the North Slope, including both surface and subsurface lands. Much of this land holds energy, mineral, and other resource potential. These lands—the ancestral lands of the Iñupiat people—were conveyed to ASRC by the United States pursuant to ANCSA to provide for the economic well-being of the North Slope Iñupiat. As noted above, under ANCSA, Congress created Alaska Native Corporations, including ASRC, “to provide benefits to [their] shareholders who are Natives or descendants of Natives or

¹ 43 U.S.C. § 1606 *et seq.*

² The Borough is the county-level government for the North Slope region of Alaska. Although the Borough is a municipality, it serves a critical role in defending the interests of its Iñupiat residents, who comprise the large majority of its population.



to [their] shareholders' immediate family members who are Natives or descendants of Natives to promote the health, education, or welfare of such shareholders or family members."³

Consistent with this unique Congressional mandate, ASRC is committed both to providing sound financial returns to its shareholders, in the form of jobs and dividends, and to preserving our Iñupiat way of life, culture, and traditions, including the ability to maintain a subsistence lifestyle to provide for our communities. ASRC regularly invests in initiatives that promote and support education, the preservation of our language, healthy communities, and sustainable local economies. In furtherance of this congressionally mandated mission to provide benefits to our shareholders, ASRC conducts and will continue to conduct, a variety of development and construction activities related to natural resource utilization, infrastructure development, and other purposes. ASRC's perspective is based on the dual realities that our Iñupiat culture and communities depend upon a healthy ecosystem and subsistence resources, as well as natural resource development as the foundation of a sustained North Slope economy.

ASRC considers the potential impact of activities on the North Slope on our communities very seriously and is committed to ensuring that oil and gas development and production proceed on the North Slope in a responsible and sustainable manner.

We write out of concern that, in the above-captioned rulemaking, the Commission has failed to assess the effects of its proposal on businesses, employees, and customers like ours. Our business is owned by socially disadvantaged Native Americans and serves many socially disadvantaged Native communities. There is no question that the proposed rule, however well-intentioned, will undermine our mission, which is to serve these communities. The proposed rule fails to mention any impact on socially disadvantaged communities. The Commission evinces no interest whatsoever in consulting with Native American businesses and Native communities.

We urge the Commission to collect the missing information it needs to understand thoroughly all effects of its proposal on people and businesses across the economy and to consider those effects carefully as it decides whether to finalize the proposal.

Federal agencies must consider the costs of their rules and whether those costs outweigh anticipated benefits. Failure to do so is "not rational"⁴ and violates the Administrative Procedure Act.⁵ The Commission has a particularly compelling obligation to take costs into account, for Congress has imposed on the Commission a special statutory duty to consider

³ 43 U.S.C. § 1606(r).

⁴ *Michigan v. EPA*, 576 U.S. 743 (2015).

⁵ 5 U.S.C. § 706; *see also, e.g., Allentown Mack Sales & Serv., Inc. v. N.L.R.B.*, 522 U.S. 359 (1998) (recognizing that irrational decision making violates § 706).



whether its rules “will promote efficiency, competition, and capital formation.”⁶ Congress did not limit this obligation to any category of businesses or markets; it demanded instead that the Commission *always* consider impacts on efficiency, competition, and capital formation, no matter whether they are experienced by public or private companies and no matter where in the economy they are felt.

The proposal’s purpose is to give investors information on which they can act, and this action will have effects across the economy. The Commission acknowledges the proposal’s potential to change the way regulated public companies operate⁷ and therefore to cause effects far beyond those companies themselves. For instance, the Commission admits that, in response to the proposal, public companies may “move assets or operations away from” communities it deems at heightened risk for severe weather; change energy sources; discontinue certain services; and break with customers, suppliers, or clients whose GHG emissions would unfavorably affect the companies’ own Scope 3 reporting.⁸ Because the proposal would apply to thousands of public companies in every economic sector and region of the country, the proposal’s changes would ripple throughout the economy, affecting practically every American business, worker, and town.

Yet despite these admissions, the Commission fails to evaluate the proposal’s impacts on the operations of public and private companies or their suppliers, customers, clients, workers, and communities. The proposal discusses the costs to public companies of preparing the enhanced reports that the proposal would demand⁹—but it gives little more than a page to the costs of its broader economic effects.¹⁰ And that page contains not a single estimate of what those costs would be nor any finding that they would be justified by the proposal’s asserted benefits. For all the Commission knows, the proposal would devastate large portions of the economy and regions of the country, drive millions into unemployment, and spark a depression. It is unreasonable in the extreme and contrary to both the Administrative Procedure Act and the securities laws to disregard the proposal’s impacts on the broader economy.

To understand the proposal’s broader impacts would require a comprehensive economic analysis, which the Commission has not undertaken and on which we and other members of the public, therefore, cannot comment. Likewise, it would require extensive information from private companies of all sorts about effects on every aspect of their operations, supply chains, and markets, to name a few salient items. Additionally, it would require information from States, towns, community organizations, and individual workers

⁶ *E.g.*, 15 U.S.C. § 78c(f).

⁷ 78 Fed. Reg. 21334, 21447 (2022).

⁸ *Id.* at 21447-48.

⁹ *Id.* at 21439-43, 21453-61.

¹⁰ *Id.* at 21447-48.



about its consequences for them as well. The Commission has not sought such information, but without it, the Commission will be unable to assess the proposal's costs against its asserted benefits and therefore will be unable to finalize a valid rule. To begin to repair this defect, the Commission should issue a request for information spelling out the kinds of data it needs from private companies, States and local communities, individuals, and all others who would be affected by its proposal.

We submit the following information to illustrate the deep and wide-ranging impact the proposal would have on private companies and their employees and customers—and perhaps more importantly, the communities they support—to enable the Commission to conduct a rigorous assessment of the costs of its proposal throughout the broader economy. Thousands of entities likewise have important information like ours to offer; the Commission should not finalize the proposal without soliciting and evaluating information sufficient for it to form and evaluate a full picture of its proposal's effects.

Many of our clients are publicly traded companies in the energy sector; over 50% of our revenues involve entities that are publicly traded or are owned by publicly traded companies. Additionally, a significant portion of our suppliers are publicly traded.

Due to these relationships with public companies, we expect that the proposal, if finalized, would impose substantial costs on us and most suppliers to the energy industry. For instance, we expect that we will be asked by one or more public companies to provide information about our GHG emissions, as well as those of our suppliers, customers, or both, for inclusion in those companies' Scope 3 disclosures. Those suppliers and customers, in turn, would be compelled to reach out to their own suppliers and customers; taken to its logical conclusion, the inquiry would expand ad infinitum. Complying with the proposed rule would undoubtedly impose significant costs.

We believe that some of our suppliers would not find it cost-effective to begin to track their GHG emissions; these suppliers would cease doing business with us or require that we cease using their goods in products destined for public companies. Either way, we would experience disruption to our supply chains—already sharply taxed by the COVID pandemic and its economic aftermath—and the costs of locating new suppliers. We also believe that some of our customers would not find it cost-effective to begin to track their GHG emissions; these customers would cease to buy our products or demand that we sell to them only products that do not include goods from public companies. We would experience either a drop-off in sales and consequently in revenue or the cost of locating new customers, or both. We cannot estimate these costs at this time, but we have no doubt that they would be substantial.

In addition to costs arising from tracking GHG emissions, we anticipate increased costs of capital. "We are careful stewards of the environment where we live and work," which is an articulated, Company behavior we embrace. We assist companies with the extensive environmental studies and analysis that must and should be performed in the Arctic to



responsibly source energy in the home of our Iñupiat shareholders. We know what must be done to protect the environment where we live and work, and we know this proposal goes too far in not adequately considering the impacts the proposal will have across most of our economy.

If we are to support energy exploration and production in the most remote region in the United States, some GHG emission is necessary. If we stopped providing services across the North Slope of Alaska, the ancestral territory of our shareholders, local stakeholders would lose an important avenue to ensuring responsible resource development on their lands. Again, this resource development provides critical infrastructure and economic support to our remote communities. Our customers would lose a knowledgeable stakeholder and partner that helps ensure work gets done the right way. And our customers' efforts to supply energy to the country could be significantly hindered during a fragile time when the cost increases necessary to put the proposal requirements into effect could have vast, deleterious effects on our nation's economy.

Moreover, publicly-traded banks and other financial institutions may be forced to view the extension of credit to Alaskan energy companies or the making of investments in our business as comparatively undesirable because these institutions would be required to report our GHG emissions in their own Scope 3 disclosures.¹¹ Such institutions would either stop doing business with us or offer us credit or investments only on comparatively unfavorable terms; either way, our cost of capital would increase, our business will suffer, and our ability to continue to serve our Alaska Native communities will decrease.

We have implemented GHG reduction measures, but are concerned about the extent of the proposal's new, required tracking and reporting with little corresponding analysis on the broader economic effects of such requirements. For example, we are involved in a pilot grant program to test the efficacy of compressed natural gas (CNG) vehicles on the North Slope of Alaska, but we may need to eliminate innovation resources to account for this proposal's cost increases. We have begun assessing our GHG Scope 1 and 2 emissions, but industry and technology are still evolving regarding the best methods and practices to achieve reliable, systemic accurate results. We could try to avoid increases to our cost of capital altogether by curtailing our GHG-producing activities, but cost impacts are presently unknown (and are not sufficiently analyzed on a broader scale in the proposal), and it would mean limiting our ability to provide services to the energy industry at a time when we have a shortage and an energy security threat. Additionally, curtailing activities might require us to reduce employee positions, hours, or both. Alternatively, we could try to reduce our emissions by installing costly technology, but these costs would have to be passed on to consumers or force us to reduce employee positions or hours.

¹¹ See, e.g., *id.* at 21374, 21448.



We also anticipate that our costs for electricity would increase—at a time when such costs are already spiking. Fossil fuel-fired power plants are major emitters of GHGs; they would likely experience significantly higher costs of capital under the proposal, and they would pass on many of those costs to their customers, including us. We might try to avoid these costs by switching to solar- or wind-derived electricity, but so would many other businesses, with the result that the cost of electricity from these producers would rise also. While this may be the ultimate goal of the proposed rulemaking, taking this approach, as opposed to any number of phased approaches to reforming the electric sector, will have an immediate, harmful economic impact. We also fear that, if we (along with many other businesses) switch to solar or wind-derived electricity, increased demand would exacerbate existing reliability concerns with electricity from these sources. As of early June, we have spent over \$380 thousand on electricity at our facilities on the North Slope, an increase of 74% over the same time period last year; we cannot afford to pay even higher rates.

Additionally, we expect to lose revenue and to see our cost of capital increase due to our geographic location. We work under the threat of severe weather on the North Slope of Alaska. We expect public companies would count our location against us when they, per the proposal, assess the climate exposure of their suppliers and customer base,¹² and we expect that some suppliers and customers would accordingly shift their business elsewhere or seek comparatively more favorable prices in exchange for continuing to do business with us. We expect the same from banks and other financial institutions considering whether to extend credit or equity investments to us.

Many or most other businesses in our area would experience similar effects, and the concentration of adverse effects would degrade our community's economy. Some businesses in our area would try to stay afloat by eliminating jobs or cutting wages and salaries; others would cancel planned expansions; still, others may move their facilities elsewhere. These actions together would make well-paying jobs scarcer in our community. As a result, employees may have to move their families to regions that public companies judge to present less climate risk. These movements would break up longstanding patterns of community life in our area.

These are just a few examples of the costs that we and other private companies, and our employees and customers, would bear if the Commission finalizes the proposal. The proposal discusses none of these costs, and its failure to do so flies in the face of both the Administrative Procedure Act and the federal securities laws. Indeed, it is very cynical for the Commission, without a forthright focus on the major consequences, to advance this sort of policy change, which has long been advocated by various special-interest groups seeking exactly these sorts of provisions; many of these groups, which have no responsibility for the economic sustainability of American businesses and communities, openly welcome such economic after-effects in the course of attaining their preferred policy outcomes and acknowledge that these outcomes should be achieved by any means necessary.

¹² *Id.* at 21354.



We strongly urge the Commission to take the time to collect the information it needs to assess realistically the full scope of its proposal's effects on the broader American economy. Congress's command and the good of the American people demand nothing less.

Sincerely,
Christine A. Resler
Christine Resler
President & CEO