July 21, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**File Number S7-06-16**
**Request for Comment on Business and Financial Disclosure Requirements in Regulation S-K**

Dear Mr. Fields:

The Edison Electric Institute (EEI) and the American Gas Association (AGA) appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) request for comment on Business and Financial Disclosure Requirements in Regulation S-K (hereafter the "Request for Comment").

EEI is the association that represents all U.S. investor-owned electric companies. EEI members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly and indirectly create jobs for more than one million Americans. With more than $100 billion in annual capital expenditures, the electric power industry is responsible for millions of additional jobs. EEI has 70 international electric companies as Affiliate Members and 270 industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

AGA, founded in 1918, represents 202 local energy companies that deliver clean natural gas throughout the U.S. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which almost 93 percent – more than 65 million customers – receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the energy needs in the U.S.

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EEI and AGA regularly work together on projects of mutual interest and impact to the energy utility sector broadly. The comments expressed herein respond only to certain questions that are most relevant to our members.

We provide our comments on certain specific questions as they relate to Regulation S-K in the Request for Comment below.

**Nature of our Disclosure Requirements**

*Principles-Based and Prescriptive Disclosure Requirements*
We believe maintaining a principles-based disclosure framework allows a registrant to more effectively tailor its disclosures to provide the information it believes is relevant for investors to understand its business and financial condition. Essential to the effectiveness of such a framework is the application of an appropriate threshold, which we believe should be rooted in the concept of materiality, in determining when and what information should be disclosed.

With respect to the definition of materiality, the U.S. Supreme Court has held that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. We believe this current definition should be retained, as it allows for sufficient consideration of both qualitative and quantitative factors in the context of a registrant's specific facts and circumstances and also reflects current practice.

In addition, after public due-process involving the same stakeholder groups likely to respond to the Request for Comment, the Financial Accounting Standards Board (FASB) recently made changes to its conceptual framework to clarify that the concept of materiality is a legal concept and aligned the generally accepted accounting principles (GAAP) definition with the concept as defined by the U.S. Supreme Court. Changing the definition of materiality would result in diversity between GAAP and SEC rules and require registrants to apply different definitions of materiality in complying with disclosure requirements of GAAP versus Regulation S-K.

We encourage the Commission to consider revising the disclosure requirements as further discussed below to remove prescriptive thresholds where such thresholds may result in the disclosure of information that is immaterial in the context of a registrant's business. As acknowledged in the Concept Release…"Limiting prescriptive disclosure requirements and emphasizing principles-based disclosure could improve disclosure (effectiveness) by reducing the amount of information that may be irrelevant, outdated or immaterial." To the extent that prescriptive thresholds are retained, we believe they should be based on a relationship to a registrant's financial metrics (e.g., as a percentage of revenues or assets) rather than a specific dollar amount.

More specifically, we recommend removing the disclosure threshold of $100,000 required by Instruction 5.C of Regulation S-K Item 103 for those matters related to government penalties/fines and instead require disclosure of those matters only that are material. Using prescriptive quantitative thresholds for disclosure requirements can result in irrelevant or immaterial disclosures that may not provide meaningful information to investors and may distract from those matters that are material. In addition, material contingencies are already required to be disclosed in the notes to the financial statements and discussed in Management's Discussion and Analysis (MD&A); therefore removal of this prescriptive requirement would reduce redundancy and eliminate disclosure of non-material information.

*Audience for Disclosure Requirements*
We believe it is appropriate and necessary for registrants to assume some level of investor sophistication in preparing their disclosures. As noted in the Concept Release, the most frequent users of Form 10-K disclosure are institutional investors, professional security analysts and sophisticated individual investors. Assuming a novice level of investor sophistication would unduly burden registrants and could result in a substantially greater volume of disclosure, but without increasing the overall usefulness of the information disclosed for the broader investor population.

Accounting and finance topics can be complex. Providing clear, concise, and understandable disclosures for reasonably sophisticated investors should be the goal of every registrant. To this end, the Commission should consider expanding the "Plain English Rules" to Regulation S-K. Applying these rules to Regulation S-K would encourage registrants to explain complex issues in a language investors can understand.

**Core Company Business Information**

We believe there is significant opportunity to increase the effectiveness of disclosures by eliminating or reducing certain disclosures required by these topics. The five-year history and general business information about a registrant's formation, organizational structure, general operations (e.g. products and services, sources of materials, seasonality, number of employees, etc.) and material properties required under Items 101 and 102 of Regulation S-K generally does not change significantly from year-to-year. Repeating these disclosures each year, especially for well-established companies, provides limited value to investors and may potentially obscure/distract from more important information included in the document.

While such information may be more meaningful in certain situations (e.g., an emerging growth company), we believe well-established companies should be allowed to provide the information through other means (e.g., filer information page on the company or SEC website, or through a separate filing with the SEC) with updates only required every three years or more frequently if there has been a substantial change. If there were significant changes to this information in the interim periods or other important changes to the registrant's industry, business environment, or other factors impacting its operations or financial position that would be meaningful to an investor, those changes would typically be disclosed elsewhere in the registrant's Form 10-K or Form 10-Q (e.g., MD&A or notes to the financial statements).

**Company Performance, Financial Information and Future Prospects**

*Selected Financial Data*
We recommend removing the disclosure requirements in Item 301 and 302(a) to present selected financial data. While the disclosure requirements are intended to provide financial statement users with access to key summary data and highlight significant financial trends for the registrant, the information is contained elsewhere in the document on a three and two-year comparative basis for the income statement and balance sheet, respectively. Additional periods are now available online, either on the company or SEC websites, which allows financial statement users to access prior information if needed. The prior period financial information was not readily available when this requirement was enacted. In addition, use of XBRL allows financial statement users to extract specific financial data in addition to the information provided in the current disclosure.

There is additional complexity under current disclosure requirements when evaluating whether a registrant is required to recast prior period financial statements as a result of adopting new accounting standards or a change in the business, such as a discontinued operation. In cases where a registrant is required to recast prior periods, the financial statements are already being recast for all periods presented (three years income statement and two years balance sheet). Recasting the fourth and fifth years required by this disclosure adds incremental cost with limited benefit. The recast financial statements should be sufficient for financial statement users to evaluate the impact of the accounting change on results of operations and financial condition.

MD&A requires disclosure of a registrant's financial performance which generally includes a discussion of any significant financial trends. We do not believe the selected financial data required to be disclosed adds significant incremental value beyond that already typically included in MD&A.

*Management's Discussion and Analysis*
MD&A requires management to disclose the activity of the business, significant trends and assumptions, and an analysis of the quality of the company's earnings and cash

flow to allow the financial statement user to evaluate the business from management's perspective.

While we acknowledge that using tabular formats can help make disclosures more understandable in some cases, we believe the format of the information disclosed in results of operations should be left to the discretion of each registrant to determine the best means of presenting information, rather than prescribing specific tabular disclosure requirements. A combination of narrative discussion, tables and charts would afford the registrant the flexibility needed to provide the financial statement user with a complete picture in the most understandable format.

The disclosure requirements in Item 303(a)(5) for contractual obligations need to be more clearly defined, specifically related to purchase obligations and construction contracts. There appear to be differences in interpretation regarding the application of the contractual obligation requirements and the information to be included in this disclosure. In addition, registrants evaluate the same pool of contracts for the Commitments footnote disclosure required by GAAP. One notable difference between these disclosures is the MD&A disclosure represents cash commitments of the registrants while the footnote disclosure represents commitments for which registrants are legally obligated. Thus, SEC filings presently include disclosures that may appear identical but in fact differ, causing confusion for both registrants and users. We recommend the Commission eliminate this duplicative disclosure by adopting a presentation consistent with GAAP. If necessary, a cross reference can be made to eliminate duplicative disclosure.

The current Regulation S-K guidance related to critical accounting estimates generally results in duplicative disclosure with the information contained in the summary of significant accounting policies disclosed in the footnotes. We recommend the Commission work with the FASB to find ways to reduce redundancy in this area between Regulation S-K and GAAP requirements while maintaining the objective of providing an analysis of the uncertainties of applying the specific principles in the registrant's MD&A. We also recommend removing the requirement to disclose in MD&A new accounting pronouncements and accounting pronouncements effective in the future. This disclosure duplicates information contained in the footnotes.

**Risk and Risk Management**

*Risk Factors (Item 503(c))*
We believe the risk factor disclosure requirements in Item 503(c) provide important information to investors, but improvements can be made to the standard to realign and emphasize the expected nature and scope of the required disclosures. The original guidance intended the risk factor disclosures to be organized and concise and to focus

on the most significant and principal factors that make a registrant's securities speculative or risky. However, over the course of time we believe registrants have expanded upon these disclosures, and as such, may unintentionally disclose factors beyond the scope and intent of the requirements in Item 503(c).

We believe some of the contributing causes of this are:

- A response to increased regulation over the course of time;
- The financial crisis and recession of 2007-2010;
- Registrants erring on the side of over-disclosure due to liability concerns; and
- Changes in risk profiles and mega trends such as: cybersecurity, climate change, aging workforce, etc.

Many of these additional risk factors are boiler-plate in nature and represent normal risks across many industries that are not specific to the individual registrant. These generic risk factors lack relevance to our primary investors. As a result, we believe clarifications and improvements could be made to Item 503(c) to make these risk factor disclosures more effective.

The disclosure requirements pursuant to Item 503(c) should be principles-based in nature which would allow registrants greater flexibility and judgment in determining which risk factors to disclose. We believe this would allow registrants to focus more clearly on risks specific to their company and help to avoid and eliminate boiler-plate disclosures.

While the current disclosure requirements state that risk factors should be limited to those that are "most significant", we recommend clarifying this term for purposes of the risk assessment process. For instance, the requirements should explicitly state that the process for assessing which risk factors to disclose should encompass multiple considerations such as probability, materiality, and an assumed level of sophistication of the registrant's investor base. Registrants should be allowed to apply probability based principles in the assessment process. Similarly, registrants should be allowed to apply judgment in assessing materiality of risk factors and omit those that are deemed to be immaterial. Also, within our industry a majority of the investors and users of the financial statements are institutional investors with a reasonable level of sophistication and understanding of the industry and its risks as a whole. We believe registrants should be able to take these matters into consideration as they decide which risk factors are most significant, which would help reduce disclosures that are common among the industry and not specific to the company.

We also recommend amending Item 503(c) to include specific examples to clarify which type of disclosures are deemed too "generic" and need not be included as risk factors.

We believe this would aid registrants in focusing more on company-specific risk factors that are more meaningful to our investors.

**Disclosure of Information Relating to Public Policy and Sustainability Matters**

*Background*
We note that the filings governed by Regulation S-K are focused on information designed to help investors assess the amount, timing, and risks associated with a registrant's future cash flows. That is, they are focused on financial information. As such, Regulation S-K articulates principles designed to identify when any topic could have a material impact on investors' assessments of the registrant's financial information.

Thus, the overall context of SEC filings, and the purpose for which they exist, is to provide materially correct financial information, material disclosures necessary to understand that information, explanations of the reasons for material changes from period to period, and explanations of material known trends or uncertainties that would cause the historical information not to be representative of the future. A transaction, event, contingency, or policy required to be reported is only relevant within this context: to support and explain the historical financial results and to indicate to what extent, if any, they would need to be adjusted by investors for known trends and uncertainties in order for investors to project future results.

Given this context, the content of such reports includes only those matters that are financially material. The definition of materiality does not focus on the nature or category of an issue, but rather on whether it could affect an investor's assessment of the reported financial information, leading to an impact on the investor's decisions. The requirements of the existing SEC financial reporting disclosure regime, therefore, necessitate company-specific judgment about individual circumstances, events, and transactions that consider the context of the entity's operations.

*Sustainability Disclosures Would Reduce Effectiveness of SEC Filings*
Given this background, we do not support the proposed addition of sustainability or public policy issues or similar matters as a distinct category for disclosure. We believe that the existing framework for identifying disclosures based upon whether they are material to the registrant's financial information is sufficiently robust and well-focused to encompass any disclosures related to these topics that investors may need for evaluating financial information.

We also believe that the inclusion of such disclosures in SEC filings, either on an *ad hoc* basis or through frameworks proposed by outside stakeholders, would not be helpful for the intended audience of these filings. In fact, their inclusion could potentially obscure relevant disclosures. Management appropriately uses its judgment to report on matters that it determines are material to investors and other users of its financial statements. As a result, and to the extent necessary, sustainability matters are discussed in SEC filings in a focused manner that considers whether each specific issue is material to that registrant's financial information.

By contrast, we note that some proposed sustainability reporting frameworks include voluminous, prescriptive disclosures for these topics. We disagree with the assertions of proponents of those frameworks that a topic can be material based upon its nature alone (e.g., sustainability). Rather, it is the intersection of the topic with a registrant's operations and finances that could lead to a determination that certain information may be material.

Simply including disclosures for a topic without regard to its materiality would reduce, rather than increase, the effectiveness of these reports, which is inconsistent with the over-arching objective of improving disclosure effectiveness. By making disclosures less effective, such actions would obscure, not clarify, relevant matters. This is particularly true with respect to proposals to include quantitative non-financial information such as environmental and social statistics. Such information is distinct from economic information contained in audited financial documents.

Further, adding such topics to disclosure requirements would be inconsistent with the focus and direction of current disclosure effectiveness initiatives by the Financial Accounting Standards Board (FASB) and even under this Request for Comment. As part of these efforts, we understand stakeholders have indicated that voluminous disclosure is often unintelligible and obscures the reader's ability to focus on specific matters that are material. Given this shortcoming, these initiatives have been designed to improve the effectiveness of financial disclosures and to minimize duplication with other existing disclosure requirements.

The FASB's and SEC's efforts target improving the effectiveness of disclosure reporting by focusing on the information most meaningful and material for investors to make informed decisions, and avoiding information overload. FASB in particular has proposed to eliminate from its standards all minimum disclosure requirements (phrases such as "provide, at a minimum, the following information"[1]). By contrast, adding a new set of sustainability disclosures could have the opposite effect by requiring broad-based, voluminous disclosures regardless of whether some or all of the recommended content is material, important, or relevant to understanding the financial results of an individual company's business.

[1] FASB Exposure Draft "Notes to Financial Statements (Topic 235) Assessing Whether Disclosures Are Material"

*Separate Reporting for Sustainability and Public Policy Disclosures*
Our member companies voluntarily disclose sustainability metrics in separate reports (other than SEC filings) specifically designed to discuss these matters for stakeholders who find them relevant. We believe that this separate reporting vehicle is the most effective and appropriate means for communicating such information. The existence and development of such reports absent any specific regulatory requirement illustrates that this type of information is best communicated outside SEC filings in reporting formats that best suit the needs of preparers and users.

The audience for sustainability and public policy information is much broader than that for the users of registrants' SEC filings. Government agencies, environmental organizations, regulators, and local civic and advocacy organizations and other groups may find sustainability and public policy information relevant. However, many of these groups are not investors and they should not be required to look to a financial report designed primarily for investors in order to obtain this information.

Further, these readers' interests often encompass topics that differ substantially from financial reporting, such as a company's policies, its practices and how they have changed over time, detailed information relevant to development or modification of public policy initiatives, and how an entity's activities impact a local community. Additionally, the information these users seek often is immaterial from a financial reporting perspective.

Finally, we note that adding a sustainability reporting framework to financial reporting requirements would not likely replace the many current sustainability reporting frameworks that exist at present, but simply would add an additional framework. For companies already responding to a significant number of reporting frameworks – GRI, CDP, DJSI etc. – incorporating such disclosures in financial reporting requirements would layer an additional cost in an already resource-constrained area. We believe that there would be significant additional costs to providing new line item disclosures in order to gather, track, verify, review, and report on additional issues and metrics.

We believe that the substantive differences between the purpose, content and objectives of SEC filings compared to sustainability and public policy matters demonstrate that users of each type of data would be best served through reports targeted to their specific needs. Therefore, we believe that the principles of Regulation S-K applicable to registrants' financial reports should not be revised to add disclosures based upon topics such as sustainability or corporate governance. Those topics would be best addressed in separate reports focused on those matters with a context, scope, and format that is not restricted by, or commingled with, specific rules related to financial disclosures.

*Conclusion*
For the reasons stated above, we urge the Commission not to depart from the disclosure principles in Regulation S-K by including topic-specific sustainability, corporate governance, or similar categories for specific disclosure. Doing so would reduce the effectiveness of the existing reporting regime and would be sub-optimal for those seeking broad-based reporting on matters outside the scope of SEC filings. Instead, we support the existing, time-tested approach in Regulation S-K that focuses on the needs of users of financial information and is based on principles designed to elicit disclosure of all material items, regardless of topic.

**Cross-Referencing**

We recommend modifying the rules to clarify that registrants may cross-reference within the Form 10-K, including within the MD&A. While rules do not prohibit the use of cross-references, the Commission has indicated there may be instances where cross-references would not satisfy the requirements or would detract from the readability or completeness of the disclosure. For example, the Commission has stated that its MD&A rules are intended to provide, in one section of a filing, a discussion of all the material impacts on the registrant's financial condition or results of operations, including those arising from circumstances discussed elsewhere in the filing. This does not further the Commission's objectives of improving disclosure effectiveness by reducing redundancy and improving the readability and usefulness of disclosures.

We believe that all sections of Regulation S-K under Items 303(a) and (b) could benefit from cross-referencing and recommend that applicable items should be amended to specifically encourage, but not require, the use of cross-references similar to those notations in Items 101(b) and (d)(2), 202(a)(5), and Instruction 5 to Item 303(a)(4) of Regulation S-K. Additionally, MD&A, certain investment company disclosures, and SEC Release No. 33-6835 dated May 18, 1989 should be amended to specifically encourage the use of cross-references. The addition of cross-referencing is not intended to change the original disclosure objectives but rather to reduce redundancy and improve the readability and usefulness of disclosures.

**Incorporation by Reference**

We recommend allowing a voluntary filer to incorporate its Form 10-K or Form 10-Q by reference in other filings with the SEC. This would eliminate the need to repeat all of the same information in the voluntary filer's registration statements (e.g., S-4). Including financial statements in filings such as an S-4 also requires that information to be tagged with XBRL, which increases the administrative burden of preparers without providing additional benefit to investors or other financial statements users.

**Structured Disclosure (XBRL)**

We propose eliminating the requirement to provide detail tagging for certain financial statement footnote disclosures. While use of XBRL can enhance data comparability, it has practical limitations that current SEC requirements do not fully consider.

Users of financial statements can readily compare large amounts of data across companies and industries, particularly when the sources of that data are financial statements tagged with XBRL. The use of block tagging can also make the search for accounting policies and certain topical disclosures more efficient. Even certain footnote details, those that lend themselves to a tabular format, can be depicted in XBRL with serious but reasonable effort (e.g., tabular disclosures related to segments, pensions, financial instruments, fair value, future debt maturities and future minimum lease payments). However, by their very nature, some footnotes disclose details in a narrative format with contextual nuances that cannot be depicted easily in a single XBRL tag, and oftentimes an extra standard axis is not enough to adequately convey the meaning.

As examples, in the electric and gas industry, footnotes describing rate proceedings before state and federal regulatory bodies, as well as numerous commitments and contingencies, are common. Differing amounts of rates requested, settlements reached and orders issued, sometimes from multiple state and federal jurisdictions, each with their specific and significant details, must be described. Further, we disclose the effects of numerous commitments and contingencies, especially related to the environment, each with a different impact on operations and liquidity due to complex and sometimes overlapping requirements and compliance deadlines. We believe other industries could offer examples with similar challenges.

We believe all stakeholders are better served when preparers focus their time and expertise on ensuring the accuracy of footnote details. Further, we believe that requiring detailed tagging of certain complex disclosures, those that naturally lend themselves to a narrative discussion rather than a tabular format, forces preparers to perform an exercise which, by its very nature, cannot achieve the end result desired. Ultimately, to properly understand all of the available information, one must read the footnote.

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EEI and AGA appreciate the opportunity to provide our input on this Request for Comment. We would be pleased to discuss our comments and to provide any additional information that you may find helpful.

Very truly yours,

/s/ Richard F. McMahon, Jr.

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