

June 7, 2022

*Via Email: rule-comments@sec.gov*

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors  
Release Nos. 33-11042; 34-94478  
File No. S7-10-22**

Dear Chair Gensler:

Constellation Energy Corporation appreciates the opportunity to provide comments on the Securities and Exchange Commission's (the "Commission") rulemaking proposal entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," as published on March 21, 2022 (the "Proposal").

We applaud the Commission's ongoing efforts to meet investors' demonstrated demand for information enabling them to make informed judgments about the impact of climate-related risks on current and potential investments. The Proposal should provide investors with more consistent, comparable, and decision-useful information needed to understand these risks. We support the Commission in this important undertaking and offer suggestions on ways the Commission can strengthen the Proposal to better achieve its stated purpose.

### **Our Company**

On February 1, 2022, Exelon Corporation separated its competitive generation and customer-facing energy businesses from its regulated utility businesses into an independent, publicly traded company known as Constellation Energy Corporation ("Constellation"). Constellation is the nation's largest producer of carbon-free energy and a leading supplier of competitive energy supply, including a variety of sustainable energy solutions, to millions of residential, public-sector and business customers, including three-fourths of Fortune 100 companies. Our generation fleet of nuclear, hydro, wind, natural gas, and solar generation facilities powers more than 20 million homes and businesses, producing 10 percent of the nation's emissions-free energy. Constellation's fleet is helping to accelerate the nation's transition to a carbon-free future with an annual output that is nearly 90 percent emissions-free. A number of our world-class nuclear plants have plans to transition to clean energy centers that will support decarbonization of other

sectors through efforts such as production of clean hydrogen and development of direct air capture technology.

We recognize that clear, transparent communication of important information about our climate-related risks and initiatives is valued by our investors. Since 2011, Constellation, as part of Exelon Corporation, has published a corporate sustainability report on an annual basis detailing, among other things, Greenhouse Gas (GHG) emissions data, climate-related risks and the management of those risks. We appreciate that the Proposal is responsive to the growing investor demand for more information about the effects of the climate on a company's business, and we strongly support many aspects of the Proposal, including the determination to model the disclosure framework on the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD") and the GHG Protocol. The Commission's proposed climate disclosure framework will enable us and many other companies to provide investors with more decision-useful climate-related information.

## **Recommendations**

The Proposal goes a long way toward achieving the Commission's stated goal of providing investors with consistent, comparable and reliable climate-related information. The enhancements to the Proposal discussed below would enable the Commission to achieve this goal more comprehensively. In particular, our proposed enhancements will help investors better understand the impact that companies are having on energy grid decarbonization.

### *Require disclosure of Scope 2 emissions calculated in the manner set forth in the GHG Protocol*

As noted in the Proposal, there are two established methods for calculating Scope 2 emissions for purchased electricity: the market-based method and the location-based method.<sup>1</sup> The location-based method estimates an average emissions intensity of a company based on its use of electricity produced within a defined sub-region of the national power grid. The company multiplies its consumption by the sub-region's average emissions intensity to effectively allocate a portion of the sub-region's emissions to the company. The market-based method estimates the emissions a company is responsible for as a result of its procurement of electricity from specific generating sources. The company multiplies its consumption by the emissions intensity of the particular generators with which it has contracted, which could be higher or lower than the grid average.

According to GHG Protocol guidance, each method is useful for different purposes, and "together, they provide a fuller documentation and assessment of risks, opportunities, and changes to emissions from electricity supply over time."<sup>2</sup> In order to comply with the GHG Protocol, a company that determines its Scope 2 emissions using a market-based approach must also calculate those emissions using the location-based method to provide a more complete picture of the company's carbon footprint and emission reduction strategies. This allows the

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<sup>1</sup> See World Resources Institute, GHG Protocol Scope 2 Guidance (2015), Chapter 4, [https://ghgprotocol.org/sites/default/files/standards/Scope%20%20Guidance\\_Final\\_Sept26.pdf](https://ghgprotocol.org/sites/default/files/standards/Scope%20%20Guidance_Final_Sept26.pdf).

<sup>2</sup> *Id.*

public to make apples-to-apples comparisons between companies. The location-based results of companies can be compared, as can the market-based results of those companies.

Unlike the GHG Protocol, the Proposal would permit a company to calculate Scope 2 emissions using either the market-based method or the location-based method, both methods, a combination, or any other method. This lack of a standard reporting methodology undermines the overarching goal of the Proposal to provide for consistent and comparable emissions data across companies and can result in double-counting of carbon-free energy.

For example, most of the carbon-free energy generated in Illinois is under contract to Illinois customers and will be explicitly reflected under a market-based determination of Scope 2 emissions. This means that emissions reported by registrants operating in Illinois that use the market-based method would reflect the benefit of the carbon-free attributes of their contracted generation. However, a company located in Indiana that reports location-based Scope 2 emissions would claim the same Illinois carbon-free energy (that has already been accounted for), because Illinois and Indiana are in the same sub-region for purposes of calculating location-based Scope 2 emissions. Because the location-based methodology uses grid average emission rates not tied to specific generators, it allocates the carbon-free attributes of all generation within the sub-region to all customers in the sub-region – even if that generation is contracted to customers in other states.

Under the GHG Protocols and EPA guidance, location-based emissions would be calculated according to eGRID sub-regions.<sup>3</sup> Indiana and Northern Illinois are both located in the RFCW sub-region, along with several other states. The table below shows emissions from this sub-region in 2020.

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<sup>3</sup> The Emissions & Generation Resource Integrated Database (“eGRID”) is a comprehensive inventory of environmental attributes of electric power systems. According to EPA, eGRID is the “preeminent source of air emission data for the electric power sector, eGRID is based on available plant-specific data for all U.S. electricity generating plants that provide power to the electric grid and report data to the U.S. government. eGRID uses data from the U.S. Energy Information Administration (EIA) Forms EIA-860 and EIA-923 and EPA’s Clean Air Market Programs data. Emission data from EPA are carefully integrated with generation data from EIA to produce useful values like pounds of emissions per megawatt-hour of electricity generation (lb/MWh), which allows direct comparison of the environmental attributes of electricity generation. eGRID also provides aggregated data by state, U.S. total, and by three different sets of electric grid boundaries (i.e., balancing authority area, NERC region, and eGRID subregion).” See <https://www.epa.gov/egrid/egrid-questions-and-answers#egrid5>

RFCW Sub-region (2020)	Fossil (TWH)	Non-Emitting (TWH)	Total (TWH)	Fossil Emissions (mm tons)	Fossil Emissions (lbs/mwh)	Total (lbs/mwh)
IL	21	103	124	13		
IN	83	7	90	69		
OH	100	21	121	75		
WV	48	3	51	49		
Other	61	49	110	38		
<b>Total</b>	<b>314</b>	<b>183</b>	<b>496</b>	<b>244</b>	<b>1,560</b>	<b>985</b>

Source: <https://www.epa.gov/egrid/download-data>

All customers in Indiana and Northern Illinois would use 985 lbs/mwh to calculate their location-based Scope 2 emissions. However, this would ignore the ownership of the non-emitting generation. Customers in Indiana have no claim to non-emitting generation in Northern Illinois and yet the location-based emission rate applicable to Indiana reflects that zero-emission power.

Under the market-based approach, customers in Northern Illinois would use an emission intensity close to zero as a result of the large amount of zero-emission under contract. Customers in Indiana would use an emission rate of roughly 1,560 lbs/mwh which excludes the zero-emission generation owned by others.

Requiring the disclosure of both location-based and market-based emissions is necessary to address this discrepancy. Each company's grid-average Scope 2 emissions can be compared using location-based results, and each company's contract-specific Scope 2 emissions can be compared using market-based results. Comparing one company's location-based emissions with another company's market-based emissions does not provide the public with actionable, comparable information. This is why the GHG Protocol requires reporting using both methodologies, and why it would undermine the Commission's stated goals in the Proposal to allow registrants to "choose their own adventure" when reporting Scope 2 emissions.

Furthermore, by permitting "any other method" to be used, the Commission would create significant administrative challenges for the Commission staff to enforce the rules as the Commission staff will not be able to assess disclosures against a defined and standard reporting methodology and the Commission staff likely will not have the appropriate technical expertise to assess the reasonableness of bespoke methods. This approach could also create a "race to the bottom" dynamic where companies, even those that have traditionally reported pursuant to the GHG Protocol, would be incentivized to adopt whichever methodology used by its peers in order to have their climate-related efforts measured on an apples-to-apples basis with competitors.

The Proposal should require Scope 2 emissions data as articulated in the GHG Protocol. The GHG Protocol has been thoughtfully designed with vast stakeholder input, is familiar to many companies and is time tested. Accordingly, we urge the Commission to revise the Proposal to require Scope 2 emissions reporting using *both* the market-based method and the location-based method as similarly required by the GHG Protocol so that investors can make proper comparisons of registrants.

*Use a broader term, such as energy attribute certificate, instead of renewable energy credit or certificate*

In establishing a national goal of 100 percent carbon-free electricity by 2035,<sup>4</sup> the Biden Administration has recognized that *all* forms of carbon-free energy will be needed. In that decarbonized power system, nuclear plants and hydroelectric dams, along with storage facilities like batteries, will be needed to balance the variable output from renewables, like wind and solar resources, which fluctuate both daily and seasonally. In the Executive Order on *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (“Clean Energy EO”),<sup>5</sup> through which President Biden accelerated the clean energy goals for federal procurements of electricity, directing the Federal Government to achieve 100 percent carbon pollution-free electricity by 2030 (including 50 percent on a 24/7 basis, discussed further below), “carbon pollution-free electricity” is defined to mean “electrical energy produced from resources that generate no carbon emissions,” including hydroelectric and nuclear resources. Similarly, the U.S. Department of Energy has recognized nuclear energy as a carbon-free energy source that is important to “ensur[ing] America’s continued leadership in clean energy.”<sup>6</sup>

Notwithstanding the critical role all forms of carbon-free energy will play in registrants meeting their emissions goals, the Proposal in some cases elevates the use of renewables. For example, a key component of the Proposal is a requirement that registrants that have set targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal, disclose how they intend to meet those targets or goals and relevant progress being made. The Commission appropriately recognizes that companies with such targets or goals may seek to reduce the carbon emissions associated with energy use through the purchase of renewable energy credits or certificates (“RECs”), and the Proposal therefore defines a REC as “a credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours)<sup>7</sup> of renewable electricity generated and delivered to a power grid.”<sup>8</sup> The Proposal, however, fails to recognize the broader category of carbon-free energy products that are available to and used by consumers interested in reducing Scope 2 energy emissions, which include attributes from non-renewable,

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<sup>4</sup> See White House Fact Sheet, President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (April 22, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

<sup>5</sup> Exec. Order 14057, *Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*, 86 Fed. Reg. 70,935 (Dec. 13, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/>.

<sup>6</sup> See U.S. Department of Energy, Clean Energy, <https://www.energy.gov/clean-energy?mselkid=83370f83d0a211ecbd51b9ba6354005d>.

<sup>7</sup> While energy attribute certificates, or EACs, are currently being denominated, nearly universally, in MWh, new EAC products may be denominated in kWh or even Wh.

<sup>8</sup> See proposed Item 1500(n) of Regulation S-K.

clean generation such as nuclear and hydroelectric energy.<sup>9</sup> Such products, which meet the requirements for market-based accounting under the GHG Protocol, allow companies to support these reliable carbon-free energy sources that are necessary to the decarbonization of the energy grid and should be reflected in the proposed disclosure framework.

We strongly encourage the Commission to revise the Proposal to use a defined term that encompasses not only renewable energy certificates but all carbon-free energy attributes. Specifically, we suggest the Commission adopt a definition based on the GHG Protocol's definition of "energy attribute certificates" ("EACs") in its Scope 2 Guidance.<sup>10</sup> To implement this change, references to "RECs" in proposed Items 1502 and 1506 of Regulation S-K should be replaced with references to "EACs" and proposed Item 1500 of Regulation S-K should be revised to include the following definition of "energy attribute certificate":

*Energy attribute certificate ("EAC")* means a credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours) of zero-emissions electricity generated and delivered to a power grid.

With these changes, it may become unnecessary to include the definition of "renewable energy credit or certificate" and references to "RECs" in the applicable rules. Using the more inclusive term, EACs, would allow for any certificate from an emission-free energy source that otherwise meets the requirements set forth in the GHG Protocol Scope 2 Guidance to be used by a company to reduce its market-based Scope 2 emissions required to be disclosed under the Proposal. This approach also would be more reflective of the broader range of resources that can be used to support GHG emission-reduction and other sustainability targets and goals also subject to the Proposal's reporting requirements.

#### *Require disclosure of the methodology underlying climate-related targets and goals*

While the Proposal elicits meaningful disclosure concerning climate-related targets and goals, the Proposal would better achieve its stated purpose if companies were required to also disclose the methodology underlying their climate-related targets and goals. This information can be

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<sup>9</sup> Constellation provides a variety of products currently and is developing new products to help our customers achieve their clean energy goals. For example, we currently offer many customers 100% renewable or carbon-free energy attribute matching on an annual basis. These products ensure that, over the course of a year, companies have purchased sufficient RECs or emission-free energy certificates ("EFECs") to match their energy consumption. This is an important step towards decarbonizing electricity supply, but as discussed below, customers are beginning to go even further and are seeking to ensure that their energy needs during every hour of every day are met with clean energy in that same hour from their local grid. In response to such requests, Constellation is developing a new 24/7 energy matching solution that aligns electricity use with a local, time-matched clean energy source to give customers clearer and more accurate data on their emissions impact. See *Constellation Launches Sustainability Partnership with Microsoft featuring 24/7/365 Real-Time Carbon-Free Energy Matching Solution* (Mar. 7, 2022), <https://www.constellationenergy.com/newsroom/2022/constellation-launches-sustainability-partnership-with-microsoft-featuring-24-7-365-real-time-carbon-free-energy-matching-solution.html>.

<sup>10</sup> See World Resources Institute, GHG Protocol Scope 2 Guidance (2015), Chapter 10, [https://ghgprotocol.org/sites/default/files/standards/Scope%202%20Guidance\\_Final\\_Sept26.pdf](https://ghgprotocol.org/sites/default/files/standards/Scope%202%20Guidance_Final_Sept26.pdf).

critically important to investors in understanding how companies intend to achieve the disclosed targets and goals and actual progress being made regarding them.

In recent years, the number of public companies that have established emission reductions targets, including Scope 2 emissions associated with electricity use, has increased significantly.<sup>11</sup> These companies are generally accomplishing Scope 2 emission reductions through the purchase of EACs, including RECs, from resources that do not directly emit greenhouse gases during the generating process. As explained above, this can include renewable facilities such as solar and wind and other carbon-free resources such as nuclear or larger hydropower facilities that do not otherwise qualify under traditional definitions of renewable energy. The disclosure requirements proposed by the Commission are grounded in the reality that companies are using these clean energy purchases to meet their climate-related goals and targets. Specifically, the Proposal would require disclosure of the amount of carbon reduction represented by associated RECs, the source of the RECs, a description and location of the underlying projects, any registries or other authentication of RECs, and the cost of the RECs.<sup>12</sup>

However, these disclosure requirements are too narrow to capture the reality of the energy decarbonization market as it exists today and as it is expected to evolve. As described above, more companies are recognizing the value of all forms of carbon-free electricity, particularly those that are dispatchable, rather than just relying on intermittent renewable energy resources to meet their carbon reduction goals, and RECs are only a subset of the broader set of EACs being used by registrants. As discussed above, proposed Item 1506 of Regulation S-K should be revised to use the broader term energy attribute certificate, or EAC. In addition, companies are increasingly seeking to support carbon-free energy claims that go beyond traditional GHG measurement frameworks, including matching electricity consumption to zero-carbon electricity production in each hour of the day. The proposed disclosure requirements are written too narrowly to give investors the information they need to understand the carbon reductions being claimed by these companies.

The Proposal would require a registrant to disclose the amount of carbon reduction represented by a carbon offset or the amount of renewable (or as recommended above, zero-carbon) energy represented by the renewable energy credit (or as recommended above, energy attribute certificate). The required disclosure appears limited to the output of a calculation made by the company with respect to a claimed carbon reduction, leaving an investor without the information needed to understand how the company arrived at its claimed carbon reduction. For example, one climate target that companies frequently disclose publicly is a commitment that their energy use will be “100% renewable” or “100% clean” by a certain date. In measuring progress toward these goals, many companies have sought to match annual energy demand with credits for clean power produced over that same year. Other companies are aiming to be more accurate and impactful by matching energy demand in each hour with clean power produced during that hour. These two approaches can result in materially different emissions impacts, with hourly matching

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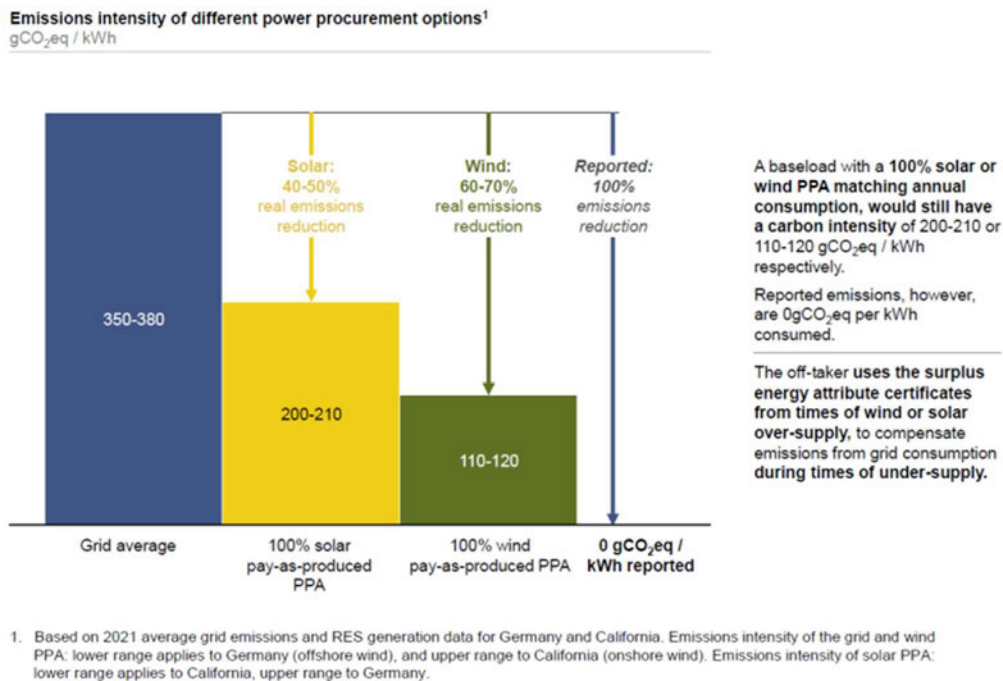
<sup>11</sup> See, e.g., The Climate Pledge (a platform for signatories to work together on actions to achieve net-zero carbon emissions by 2040 and signed by 314 companies and organizations), <https://www.theclimatepledge.com/>.

<sup>12</sup> See proposed Item 1506(d) of Regulation S-K.



more likely to result in greater emissions reductions. Nonetheless, the proposed disclosure requirement is not specific enough to require an explanation of those differences.

This distinction is important because existing GHG reporting frameworks allow a company to claim that its energy use is “100% renewable/clean” even if the company is achieving that goal by taking advantage of an oversupply of clean power produced in one month (sometimes on the opposite end of the country), while relying on fossil fuel energy to power their actual operations in another month. Theoretically, an annualized approach to measuring progress toward a clean energy goal will even allow a company to rely on fossil fuels most of a year if it offsets the associated emissions by buying a large quantity of EACs produced during a few months. A report produced by Long Duration Energy Storage (LDES) Council, with insights and analysis provided by McKinsey & Company, estimates the average carbon intensity of 100% solar or wind claims based on an annual matching methodology.<sup>13</sup> As shown in the chart below, a company matching its entire annual electricity consumption with purchases of solar power across the year in an equal volume would be able to report zero emissions associated with its electricity use even though the actual emissions associated with its electricity consumption is only reduced by approximately 40-50%. Matching annually with wind power yields higher emission reductions of approximately 60-70%, but still far below the claimed 100%.



In recognition of the significantly different impact these approaches have on reducing actual emissions, an increasing number of companies, organizations, and governments around the world

<sup>13</sup> LDES Council and McKinsey & Company, *A path towards full grid decarbonization with 24/7 clean power purchase agreements* (May 2022), <https://www.mckinsey.com/~media/mckinsey/industries/electric%20power%20and%20natural%20gas/our%20insights/decarbonizing%20the%20grid%20with%2024%207%20clean%20power%20purchase%20agreement/s/a-path-towards-full-grid-decarbonization-with-24-7-clean-power-purchase-agreements-v2.pdf>.



have begun making commitments to ensure that each hour of energy consumption – not just an annual total – is offset with clean energy produced during that hour. As referenced above, President Biden recognized the importance of matching carbon-free energy needs on an hourly basis in the Clean Energy EO by setting a government-wide goal of purchasing 50 percent 24/7 carbon pollution-free electricity by 2030.<sup>14</sup> Similarly, in September 2021, Constellation joined a group of energy consumers, suppliers, and governments, in partnership with the United Nations, in signing a set of principles known as the 24/7 Carbon-Free Energy Compact.<sup>15</sup> The Compact is intended to accelerate the decarbonization of electricity grids by adopting, enabling, and advancing 24/7 carbon-free energy. An increasing number of individual companies<sup>16</sup> and municipalities<sup>17</sup> have also committed to 24/7 carbon-free energy.

As more and more companies make commitments regarding their relative use of renewable and other carbon-free clean energy sources, and as more and more investors and companies recognize the significantly different emissions impacts that result from hourly compared to annual matching methodologies, it is critical that the Commission design the rules to provide investors information that enables them to differentiate between companies that match on an annual basis and continue to source energy needs from fossil fuels for significant periods of the year and companies that are achieving the same goals without supporting the continued use of fossil fuels. These two approaches have very different impacts and those differences must be understood for investors to understand the progress a particular company is making towards its stated climate-related goal or target and the impact that company is having on driving demand for clean energy that is produced during hours and where and when electricity is being consumed. We thus recommend that, like the approach set out for the Federal Government in the Clean Energy EO, the Commission require that registrants support any climate-related targets or claims with information on the methodology used to determine the carbon reduction represented

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<sup>14</sup> Section 603(a) of the Clean Energy EO 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.”

<sup>15</sup> UN Energy, 24/7 Carbon-Free Energy Compact, <https://www.un.org/en/energy-compacts/page/compact-247-carbon-free-energy>.

<sup>16</sup> See, e.g., Sundar Pichai, *Our third decade of climate action: Realizing a carbon-free future*, Google Blog (Sept. 14, 2020), <https://blog.google/outreach-initiatives/sustainability/our-third-decade-climate-action-realizing-carbon-free-future/> (commitment to operate on 24/7 carbon-free energy by 2030); Lucas Joppa and Noelle Walsh, *Made to measure: Sustainability commitment progress and updates*, Microsoft Blog (July 14, 2021), <https://blogs.microsoft.com/blog/2021/07/14/made-to-measure-sustainability-commitment-progress-and-updates/> (commitment to have 100 percent of Microsoft electricity consumption, 100 percent of the time, matched by zero carbon energy purchases by 2030); *Iron Mountain Data Centers Among the First to Track Renewable Energy by the Hour* (Apr. 14, 2021), <https://www.ironmountain.com/about-us/newsroom/press-releases/2021/april/iron-mountain-data-centers-among-the-first-to-track-renewable-energy-by-the-hour> (commitment to source 100% renewable energy aimed at matching the hourly usage of all of its facilities in Pennsylvania and New Jersey (over 60 buildings), including two data centers).

<sup>17</sup> See, e.g., Shelby Fleig, *Des Moines sets ambitious targets to lower greenhouse gas emissions, go carbon-free by 2035*, Des Moines Register (Jan. 12, 2021), <https://www.desmoinesregister.com/story/news/2021/01/12/des-moines-sets-ambitious-goals-lower-greenhouse-gas-emissions-climate-sustainability/6637271002/> (City of Des Moines, Iowa plans to achieve 100%, 24/7 carbon-free electricity by 2035).

by a carbon offset or purchase of clean energy as represented by an energy attribute certificate. Specifically, Constellation recommends that proposed Item 1506(d) of Regulation S-K be revised as follows (with recommended additional text italicized and underlined):<sup>18</sup>

If carbon offsets or EACs have been used as part of a registrant's plan to achieve climate-related targets or goals, disclose the amount of carbon reduction represented by the offsets or the amount of generated zero-carbon energy represented by the EACs, *the methodology for calculating the carbon reduction attributed to the offsets or EACs*, the source of the offsets or EACs, a description and location of the underlying projects, any registries or other authentication of the offsets or EACs, and the cost of the offsets or EACs.

In adopting this regulatory text, the Commission should explain its intent in an instruction to proposed Item 1506(d) of Regulation S-K or in the adopting release that the methodology for calculating carbon reductions attributed to EACs must disclose the time horizon over which the registrant is matching its clean energy purchases to electricity consumption. The Commission also should clarify that this methodology must describe the geographic location of its electricity consumption in relation to the geographic location (*i.e.*, the balancing authority) of the zero-carbon generation associated with EACs used by the registrant to claim a carbon reduction. To be clear, this proposed disclosure requirement would not obligate a registrant to match its electricity consumption with clean energy production over any particular time horizon, whether annual or hourly. It would, however, give investors the information they need to understand any carbon reductions claimed by a registrant when associated with clean electricity production. This will improve transparency and better achieve the Commission's stated goal of helping investors assess the effectiveness of a company's plan to achieve its climate-related targets or goals and helping to mitigate instances of companies misrepresenting the actual impact of their emission reduction efforts.<sup>19</sup>

*Require consistency in the disclosure of carbon offsets reliance and purchases of zero-carbon energy to reduce GHG emissions*

The Commission also should revise the Proposal to clarify that GHG disclosure requirements include an obligation to explain any claims made with respect to the use of carbon offsets or EACs, including RECs, to reduce the GHG emissions otherwise reported under the Proposal. As discussed above, companies that have set a target or goal related to the reduction of GHG emissions or other climate-related target or goal would be required under the Proposal to explain how they use purchases of zero-carbon energy to offset carbon emissions. If a company has no such target or goal, however, the Proposal will not require that company to explain any claims it may make with respect to the offset of its GHG emissions. This gap should be closed by revising the Proposal to include comparable disclosure requirements for registrants that have made claims with respect to the use of carbon offsets or energy attribute credits, including renewable energy

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<sup>18</sup> Consistent with the recommendation above, references to renewable energy credits (RECs) have been replaced with the more inclusive term energy attribute certificates (EACs).

<sup>19</sup> See The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478, at 271 (Mar. 21, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

certificates, to reduce GHG emissions. Specifically, we recommend that proposed Items 1506(a)(1) and 1506(d) of Regulation S-K be revised as follows (with recommended additional text italicized and underlined):<sup>20</sup>

(a)(1) A registrant must provide disclosure pursuant to this section if it has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal (e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products) such as actual or anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law regulation, policy, or organization, *or made any claims with respect to the offset of GHG emissions using carbon offsets or EACs.*

(d) If carbon offsets or EACs have been used as part of a registrant’s plan to achieve climate-related targets or goals *or to support any claims made with respect to the offset of GHG emissions,* disclose the amount of carbon reduction represented by the offsets or the amount of generated zero-carbon energy represented by the EACs, the source of the offsets or EACs, a description and location of the underlying projects, any registries or other authentication of the offsets or EACs, and the cost of the offsets or EACs.

#### *Additional Recommendation*

We strongly support the Commission’s determination to model the proposed climate-related disclosure framework on the recommendations of the TCFD and the GHG Protocol. The TCFD framework and the GHG Protocol are widely accepted by registrants and investors, which will help elicit more consistent and comparable climate-related information. Moreover, the TCFD framework and GHG Protocol are the products of extensive and thorough outreach and engagement with a wide range of stakeholders. However, the TCFD Framework and GHG Protocol are not set in stone. The GHG Protocol specifically acknowledges that since its standards were published, “there have been many important learnings and developments” including the release of the Proposal.<sup>21</sup> Consequently, the GHG Protocol announced that it was starting a process “to determine the need and scope for additional guidance building on the existing set of corporate GHG accounting and reporting standards for scope 1, scope 2, and scope 3 emissions.”

It is critical that the climate-related disclosure framework adopted by the Commission includes a mechanism to ensure the Commission will regularly assess whether its framework needs to be updated given the rapidly evolving nature of the global climate reporting ecosystem. Such a review is needed to ensure that disclosure requirements reflect actual practice being encouraged and adopted by registrants. Without such a requirement, important and necessary updates to the climate-related disclosure framework could be de-prioritized or even ignored indefinitely. Specifically, we recommend that the Commission include a regulatory requirement for periodic,

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<sup>20</sup> Consistent with the recommendation above, references to renewable energy credits (RECs) have been replaced with the more inclusive term energy attribute certificates (EACs).

<sup>21</sup> Greenhouse Gas Protocol, *GHG Protocol to assess the need for additional guidance building on existing corporate standards* (Mar. 31, 2022), <https://ghgprotocol.org/blog/ghg-protocol-assess-need-additional-guidance-building-existing-corporate-standards>.

retrospective review such that, for example, the Commission would be required to review the current state of the TCFD framework, GHG Protocol, and other appropriate frameworks and standards and determine – via an announcement in the *Federal Register* subject to public notice and comment – whether the regulations need to be updated. To implement this recommendation, the Proposal could be revised to include the following requirement:

The Commission shall periodically review the reporting standards issued by the Greenhouse Gas Protocol and Task Force on Climate Related Financial Disclosures and, after public notice and comment, determine whether changes may be necessary to the climate-related disclosure requirements set forth in Article 14 of Regulation S-X, subpart 1500 of Regulation S-K, and related sections.

The Commission could also clarify that, when the TCFD framework or GHG Protocol is updated, companies that choose to make corresponding updates to their climate-related disclosures would be in compliance with the Proposal.

### **Conclusion**

Once again, we support the Commission’s ongoing efforts to meet investors’ demonstrated demand for information enabling them to make informed judgments about the impact of climate-related risks on current and potential investments. The recommendations above will strengthen the Commission’s effort in that regard and we appreciate the opportunity to submit comments on the Proposal. We would be pleased to discuss our perspectives on these issues with you or the Commission staff at any time.

Respectfully,



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