ENERGY WORKFORCE & TECHNOLOGY COUNCIL

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Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Energy Workforce and Technology Council Comments on Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors" File Number S7-10-22

Dear Secretary Countryman:

The Energy Workforce and Technology Council ("Energy Workforce") appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's ("Commission") proposed rule that would require climate-related disclosures ("Proposed Rule").

Energy Workforce represents more than 450 energy technology and services companies and more than 620,000 men and women across the country working to deliver safe, profitable, and sustainable lower-carbon energy. Like the rest of the energy industry, the companies that comprise our membership are diverse in size, scope, and governance models. Our members represent the spectrum from private sole proprietorships, to publicly held companies with thousands of employees.

Energy Workforce member companies are at the forefront of meeting global energy demand and maintaining U.S. energy security through the development of technologies and processes to make the energy supply chain cleaner and more efficient. Carbon Capture Utilization and Storage (CCUS), methane-reducing technologies, and wind energy are just some of the ways Energy Workforce Member Companies are innovating and adapting to lead the way to a lower carbon future. Energy Workforce supports the overall mission of the proposed rule to encourage companies to work towards lowering emissions. However, a major overhaul of disclosure requirements, and the funding and manpower necessary to comply with such sweeping requirements, may threaten the implementation and scaling of major clean energy technologies in their final stages of development, thwarting the overall mission of the proposed rule.

Energy Workforce strongly believes that metrics and disclosures are best suited as a public-private partnership to assure goals and expectations are realistic, achievable, predictable, and that the collected data is used to improve climate change outcomes and not simply to make a case against one form of energy or another. A fair and achievable reporting system encourages industries to lower emissions, is developed in a way that does not impose disproportionate compliance costs and allows companies of all sizes to participate. Energy Workforce believes that all data requested should be limited to information considered material by the issuer and its shareholders. Mandated data required by the Commission that seeks to impose significant new climate disclosures that go beyond the scope of the longstanding materiality standard would run afoul of the Commission's authority.

Energy Workforce will focus on the following topics:

- **Materiality Standard:** Certain greenhouse gas (GHG) disclosures, particularly within Scope 3, would go beyond the scope of longstanding materiality standards for the Commission.
- **Scope 3 Reporting Requirements:** The Scope 3 framework that has been laid out in the Proposed Rule lack clear guidance for companies to provide complete, accurate, and comparable disclosures and should not be included in the initial Proposed Rule.
    - **Scope 3 Undue Burden on Companies:** The framework of the proposed Scope 3 emissions reporting puts an undue financial and operational burden on companies within our sector.
    - **Third-Party Auditing:** The required auditor qualifications within the Proposed Rule are unclear, which will lead to a lack of uniformity amongst reporting entities.
    - **Scope 3 Assurance Standards**: A definitive list of acceptable Assurance standards would be necessary should the Commission decide to move forward with mandatory Scope 3 reporting.
    - **Commission Cost-Benefit Analysis:** The cost-benefit analysis underestimates the full costs of the Proposed Rule.
    - **Ongoing Compliance:** The costs associated with maintaining compliance with the Proposed Rule, as written, are not sustainable for mid-to-small size companies.
- **Implementation Timeline:** The implementation timeline set by the Proposed Rule is not feasible; the Commission should use a phase-based approach to the disclosure requirements.
- **Safe Harbor Requirement:** The Safe Harbor language is inadequate and provides only limited protection. A Safe Harbor requirement is necessary and such requirement should be clarified and strengthened should the Commission move forward with Scope 3 requirements.

Scope 3 Emissions

Energy Workforce has significant concerns regarding the inclusion of Scope 3 reporting requirements in this proposed rule. The guidelines are not yet defined enough to ensure accurate and fair reporting, and the framework puts undue burden on companies within our sector. COVID-19 and the war in Ukraine have thrown the world's supply chain into disarray. These, among other factors, are outside of the hands of reporting companies and could influence accurate and comprehensive Scope 3 disclosures. Adding this regulatory uncertainty at this time could very well threaten American energy security and that of our allies who are increasingly dependent on U.S. energy supplies.

Energy Workforce believes that elements of the requested Scope 3 reporting may exceed the jurisdiction of the Commission. The Commission is charged with providing relevant information to shareholders and their investments. All data requested should be limited to information considered material by the issuer and its shareholders. The Commission was originally created by the Securities Act of 1933 and Congress established the Commission to implement and enforce this law and specifically to require new disclosures from public companies not just at registration but on an ongoing basis. These disclosures were intended to protect investors and to maintain fair, orderly, and efficient markets and facilitate capital formation. Further clarification can be found from the Supreme Court that has worked to further define materiality in *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976); As per disclosures, the court held that a fact is deemed material if: “an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.” Energy Workforce believes information such as the commuting patterns of employees falls far outside of the “reasonable shareholder” standard.

The Proposed Rule requires a registrant to disclose information on its entire value chain which is complex and often lacks clear supplier data and supplier transparency. Many suppliers and members of the energy services value chain are privately held and would not be subject to this Proposed Rule. Additionally, many of these companies are small and lack the internal systems to accurately obtain and track emissions data. Separately, organizations that do track their Scope 3 emissions can use different approaches, assumptions, and sources of data, and technically be compliant.

The proposal requires registrants to disclose information on the entire value chain, including supplier environmental impacts and end use impacts. Often producers cannot directly track the use of a product, for example, a barrel of oil and what its end use will be. The details involved in this reporting are immense, even going as far as including the emissions effects related to the commuting patterns of a company’s employees. The direct relevancy of such secondary information is unlikely to be relevant to the vast majority of investment decisions.

Energy Workforce also has significant concerns regarding the audit requirements for the proposed emissions reporting. It is our belief that the Auditor qualifications in the proposal are unclear, which will lead to a lack of uniformity amongst reporting entities. Energy Workforce believes that additional clarification on what constitutes “significant experience” in GHG emissions and what constitutes an attestation provider’s independence is necessary.

Energy Workforce believes the proposed Assurance standards are currently inadequate. Energy Workforce proposes that for clarity to be achieved across the board, a definitive list of accepted Assurance standards should be included in any final rule, should the SEC move forward with mandatory Scope 3 reporting. As written, the expansion of Assurance standards to Scope 3 emissions requires reliance upon third party measurements and statements, which imposes undue risk upon filers. Energy Workforce recommends limiting Assurance to Scope 1 and Scope 2 emissions to ensure the greatest amount of certainty and control for filers.

In conclusion, Energy Workforce believes that the provisions in the proposed rule related to Scope 3 are not material and should be removed in the final rule. The direct relevancy of such secondary information is unlikely to be relevant to the vast majority of investment decisions. Respectfully, we ask that the Commission dramatically scale back this proposed rule, especially regarding Scope 3 emissions, to ensure that it remains within its original jurisdiction absent additional legislation from Congress to expand the scope of the Commission itself.

Implementation Timeline and Compliance Cost

Energy Workforce is concerned about the feasibility of the implementation timeline set by the Proposed Rule and urges the Commission to use a more appropriate phased approach instead. A feasible phased approach would allow registrants to build and set the processes in place in conjunction with the audit firms verifying the information. Additionally, the Commission should consider a bifurcation of the Phase One implementation. Adding such a complex reporting scheme during a time of significant financial uncertainty has the potential to derail an already fragile economic recovery from the COVID-19 crisis and other significant geopolitical challenges.

Energy Workforce believes the proposed implementation period simply does not allow sufficient time for adoption of such a complex rule. The Commission's Fact Sheet released with the rule notes that to address existing "investor needs", "[m]any issuers ***currently*** seek to provide [the] information" on climate related risks proposed to be required by the rule. [Fact Sheet, Background, pg. 1] However, when the draft rules were released, the available public data shows that issuers, especially the mid-sized and smaller registrants that will be subject to the new rules, have significant work ahead of them to establish and implement the data gathering processes and reporting controls necessary to comply with the new rules.

In particular, as of March 2022, for the listed companies included in the Russell 3000 index that were outside the S&P 500, approximately 6% of registrants had disclosures of climate-related risks on business and financial planning and only 5% reported specific board oversight of climate-related risks and opportunities. Additionally, while GHG emissions reporting had slightly better adoption, only approximately 20% of such companies had previously disclosed their Scope 1 and Scope 2 emissions, just over 11% had disclosure of Scope 3 emissions and a mere 6% reported third party verification of published GHG emissions data. [See Graham, Jude and Tung, Dennis, Whitepaper, New SEC Climate Change Risk Disclosure Regulations, www.isscorporatesolutions.com]. These numbers make clear that a substantial majority of ***all*** listed companies will be required to establish new processes and associated controls to (i) gather and validate new data sources previously maintained (if at all) outside a company's financial reporting systems and (ii) monitor such reporting protocols and processes. This burden will fall heaviest on the smaller reporting companies that have fewer resources to implement the new requirements.

Compliance with the Proposed Rule will require great expense, including the hiring of internal personnel dedicated to such risk analysis and reporting and the use of a limited pool of expensive engineering and general consulting experts on emissions and general climate risk reporting implementation and specialized legal advisors in order to comply. Estimates are that the energy sector's cost of compliance for the rule could be as a high as $6.378 billion. At a time where global energy supplies are disrupted and prices continue to rise this added cost could further burden the already fragile American economy and threaten our energy security. Energy Workforce believes the Commission's cost-benefit analysis meaningfully underestimates the costs that will be required of registrants to comply with the new rules, and similarly fails to provide a sufficient "phase-in" period for implementation.

To permit companies to better mitigate these significant costs and ensure sufficient time for establishing and properly implementing the necessary systems and controls, Energy Workforce membership makes the following suggestions:

1. The Proposed Rule should be scaled back to a rule that fits within the scope of the SEC and excludes the Scope 3 reporting proposal that we believe is beyond this scope
2. The Commission should allow companies at least two years after the final rule is published before its requirements are applicable at all, and
3. Should the Commission decide to include Scope 3 reporting, it should correspondingly extend the existing proposed phase-in timeline for Scope 3 GHG emissions reporting and emissions reporting Assurance correspondingly

For context, Energy Workforce believes that the proposed reporting requirements will be the most significant change to reporting requirements since the adoption of Sarbanes Oxley. While various aspects of the finance framework were in place before the 2003 Sarbanes Oxley Act deployment, there were numerous years of work by reporting companies, audit firms, and agencies to successfully deploy the Act and realize the intended results. Some of the Act's requirements were satisfied by NASD and NYSE rule provisions existing at enactment. Additional amendments were required, but nothing to the level of research and development necessary to successfully deploy this proposed SEC Climate Reporting Rule placing an undue and unrealistic burden on reporting companies before processes are developed, tested, and matured.

Safe Harbor Rule

Should the SEC choose to move forward with the Proposed Rule, there are significant legal implications for all affected companies especially when it comes to Scope 3 emissions. The existing guidelines for Scope 3 measurement are extremely confusing, inconsistent and vary widely across different sectors. Given the history of large-scale regulatory actions such as this, it is reasonable to assume that opportunistic bad actors will attempt to capitalize on this confusion and to file lawsuits. It is quite possible that baseless lawsuits could soon outnumber warranted ones. Currently, it is estimated that securities class action lawsuits wipe out an average of 3.5% equity value and U.S. companies spend $1 billion a year defending against these lawsuits. Increasing the cost of operations on U.S. energy companies at this time will lead to less money for investment and expansion which in turn will threaten the ability to provide long term energy security to the United States and our allies. Additionally, this burden may lead to companies choosing to avoid going public to avoid this new legal liability.

Energy Workforce believes that a strong Safe Harbor framework is needed should the SEC move forward with its proposal to require companies to disclose Scope 3 emissions. Scope 3 should be optional emission reporting with Safe Harbor protection in place if companies desire to report their results voluntarily. Without direct control, reporting companies will not have insight into Scope 3 emissions occurring in entities not controlled by the company that serves the company's supply chain.

While the proposed rule insulates companies from certain securities law liabilities related to Scope 3 emission reporting, the protection should be expanded and extended until emission scope, techniques, and methods are standardized based on defined emission categories by industry. In addition, Safe Harbor for Scope 3 should only be modified, limited, or removed when accepted industry-specific processes for Scope 3 identification and classification are defined and adopted by globally recognized public organizations.

Furnished vs. Filed

Energy Workforce recommends that the Commission adopt a short, generalized disclosure worksheet to be “furnished” rather than “filed” with the Commission, while also allowing companies to continue to disclose information utilizing any commonly used reporting frameworks.

Retroactivity

Energy Workforce is concerned with the proposed rule’s provisions that apply retroactively. Under the proposed rule, a company would be required to provide GHG emissions data for the past year, as well as for “the historical fiscal years included in its consolidated financial statements.” Per the provisions of the rule, depending on their size, public companies are generally required to include two or three years of historical financial statements in their annual filings. Energy Workforce has concerns that this mechanism would mean that in the first few years of reporting, there could be instances where companies would be forced to report on GHG emissions for years that they were not required to keep such data.

Conclusion

The Energy Workforce and Technology Council and our members appreciate the U.S. Securities and Exchange Commission's efforts to solicit feedback and comments as part of this process. As an industry, we are also seeking improvements to the current reporting requirements and structures. This draft rule creates significant uncertainty and leaves many questions unanswered. This uncertainty, especially for the energy industry, could hinder new investment and growth just at a time when the world and the United States need more energy.

We recognize that any actions taken by the Commission in the realm of climate and ESG-related disclosures will have a guiding influence beyond the statutory and regulatory jurisdictions of the agency. Additionally, any new or amended disclosure requirements should be adopted in accordance with longstanding materiality standards and with the understanding that there needs to be an implementation period allowed with proper technical assistance offered to impacted entities.

We appreciate the opportunity to comment and look forward to participating in the Commission's next steps.

Sincerely,

Leslie Beyer

Leslie Beyer
Chief Executive Officer
Energy Workforce and Technology Council