Edison Electric INSTITUTE

American Gas Association

June 2, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: ESG and Climate Change Disclosures – March 15, 2021 Request for Public Input

Dear Chair Gensler:

Thank you for the opportunity to provide comments in response to the March 15, 2021 Request for Public Input on Environmental, Social and Governance ("ESG") and climate change disclosures.

The Edison Electric Institute ("EEI") is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies as International Members, and hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

The American Gas Association ("AGA"), founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 76 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 72 million customers — receive their gas from AGA members. Today, natural gas meets more than 30 percent of the United States' energy needs.

The electric and gas utility sector is the most capital-intensive industry in the United States. Our members raised and invested more than $140 billion in capital expenditures in 2020 and more than $1 trillion over the past decade. Consequently, efficient and transparent capital markets, and ensuring that investors have the information that they need, are vitally important to EEI, AGA and our members.

Our members are leading the transition to the lower-carbon energy economy. In fact, as of the end of 2020, the electric power sector had reduced carbon emissions by 40 percent compared to 2005 levels, the lowest level in more than 40 years. Many of our members have pledged to reach net zero emissions by 2050 and have set interim reduction targets in advance of 2050. The methane emissions best practices implemented by AGA member gas utilities have helped reduce methane emissions from U.S. natural gas distribution by 69 percent since 1990, even as the industry added more than 788,000 miles of pipeline to serve 21 million more customers. These emissions reductions efforts are evidence of the electric and gas utility industry commitment to ESG and climate-related initiatives, and we applaud the United States Securities and Exchange Commission's (the Commission) focus on the related disclosures.

Climate change disclosure and, more broadly, ESG disclosures, have been a critical topic for EEI, AGA, and our members for many years. In fact, our industry developed the first-of-its-kind ESG reporting template with a focus on environmental and climate disclosure, the EEI-AGA ESG/Sustainability Reporting Template. Recognizing the importance of climate change disclosure, we began the process of developing and implementing our ESG template several years ago.

What makes our template unique is that it was developed with and for investors, who emphasized the importance of consistent, brief, relevant disclosure metrics accompanied by narrative, qualitative discussion. This group has included 9 of the 10 largest institutional investors in the United States, representing over $31 trillion of assets under management. Our process is both transparent and inclusive, as we have invited policymakers and representatives of proxy advisory firms, rating agencies, ESG rating providers, non-governmental organizations (NGOs), including Ceres, the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD), and other key stakeholders to participate and provide feedback that we incorporate into the template.

Through ongoing collaboration, we regularly enhance the template based on evolving investor feedback and their ESG informational needs. In fact, every year for the past four years, our members have met semi-annually with a comprehensive group of institutional investors, lenders and financial institutions to assess and refine our ESG template. In the Appendix, we have attached information related to the latest version of the template, which our members will use to complete their ESG/Sustainability disclosures later this year. We ask you to preserve the value of this effort by adopting the latest template specifically for our industry, and our model process more generally, as the basis for any specific disclosure requirements you may adopt.

Executive Summary

The electric and gas utility industry is committed to ESG and climate-related initiatives, and we support the Commission's focus on the related disclosures. Our experience in developing the EEI-AGA ESG/Sustainability Reporting Template, the first-of-its-kind, sector-wide ESG reporting template with a focus on environmental and climate disclosure, has helped to inform our comments to the Commission.

We believe that ESG, and specifically climate change, disclosures are best determined in collaboration between registrants and investors, and should be flexible, sector-specific, and principles-based as opposed to a rules-based, one-size fits all approach. We urge the Commission to focus its efforts on the provision of concise and financially material climate change information by issuer companies for investors. We recommend that the Commission adopt a "furnished" not "filed" approach that includes enhanced safe harbor provisions. Finally, the Commission should provide registrants the flexibility to make climate disclosures using either nationally recognized, industry-developed, or internally developed reporting standards, such as the EEI-AGA ESG/Sustainability Reporting Template, which we specifically recommend for our industry.

Should the Commission opt to identify an entity to oversee the reporting framework, we recommend an independent body with characteristics similar to the Financial Accounting Standards Board (FASB) and the Public Company Accounting Oversight Board (PCAOB) including a focused mission, an expert board representing the full diversity of stakeholder interests, a rigorous and open process, transparent and impartial funding, and sound governance, complemented by Commission oversight before such standards are finalized. We also caution against delegating the development of public-company disclosure requirements to NGOs or private disclosure companies.

We understand that ESG disclosures are nascent and evolving, as are investor needs and expectations for this information. We believe our recommendations are consistent with the following recent public statement by John Coates, Acting Director of the Division of Corporation Finance, "Going forward, I believe SEC policy on ESG disclosures will need to be both adaptive and innovative. We can and should continue to adapt existing rules and standards to the realities of climate risk, for example, and the fact that investors increasingly are asking for ESG information to help them make informed investment and voting decisions. We will also need to be open to and supportive of innovation – in both institutions and policies on the content, format and process for developing ESG disclosures."[1]

Detailed Comments

Below we provide detailed responses to each of the questions posed in the March 15, 2021, request for public input.

1. **How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?**

   As our experience has demonstrated, we believe the best process to identify appropriate metrics and disclosures—the process that has been very successful for our industry and its investors—is for industries to work with investors and other stakeholders to identify and disclose the relevant, financially material quantitative metrics and qualitative information that will be the most useful to investors for a particular industry. This process will drive consistency, comparability, and reliability in climate-change disclosures, the three goals that you identified in your question.

   The Commission could accomplish these goals by more specifically establishing expectations for annual disclosure by registrants in one of several ways. This specificity would reduce the potential for confusing, repetitive, or duplicative disclosures, and therefore benefit both registrants and investors. One option would be through the addition of a new Item in Part I of Form 10-K that identifies the location of the registrant's climate change disclosures, which should be, at the registrant's election, either on a website or in the Form 10-K itself. If outside the Form 10-K, this would allow registrants to name the report(s) in which the climate change information can be found without incorporating that information by reference into the Form 10-K.

   In all cases, the information provided should be limited to that which is material for investors, consistent with the Commission's mission of "protecting investors, maintaining

[1] John Coates, Acting Director, Division of Corporate Finance, U.S. Securities and Exchange Commission, ESG Disclosure-Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets (Mar. 11, 2021), . U.S. Securities and Exchange Commission. Retried from: https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121 .

fair, orderly, and efficient markets, and facilitating capital formation," and should be deemed "furnished" to the Commission and not "filed" with the Commission. This recommended treatment reflects our experience that ESG disclosures generally, and climate change disclosures specifically, are evolving and are at least several years from being sufficiently mature to support the more rigorous liability structure attendant to "filed" information. We discuss this concern in more detail later in our comments.

Moreover, the evolving nature of climate change disclosures as well as the forward-looking nature of the models used to analyze items such as future emission rates support the need to provide a safe harbor for ESG disclosures when the disclosures have been prepared in good faith, even from traditional Rule 10b-5 liability. This approach also would be consistent with the protections afforded under the Private Securities Litigation Reform Act of 1995 for certain forward-looking statements. We reemphasize that climate change data and disclosure are inherently uncertain—particularly scenario-based data and forward-looking models using long time horizons. Therefore, a safe harbor is necessary and would allow, as well as encourage, companies to provide more robust information without unnecessarily exposing them to liability as the models and scenarios change over time.

As we discuss more fully in our response to Question 10, we recognize and appreciate the value, both to registrants and the users of their reports, of high-quality disclosures, and we fully support processes that achieve that objective. Notwithstanding this priority, we are concerned that an unintended consequence of incorporating new and evolving ESG disclosures within the same reporting and liability structure as more mature, objective requirements may have the counterproductive effect of constraining more robust disclosures and producing more compliance-oriented, boilerplate results. Accordingly, we believe the framework proposed above is necessary to support the adoption of specific requirements that will lead to effective disclosure of these topics.

2. **What information related to climate risks can be quantified and measured? How are markets currently using quantified information? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type of registrant)? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate**

change? What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?

a. The information that can be measured and quantified will vary widely by industry. For the electric industry, investors identified carbon emissions as the most important quantitative factor. The boundaries of these emissions and results should be disclosed and may vary by company, but generally include direct carbon emissions from utility-owned generation and power that is purchased for the delivery to and use by customers. Similarly, for the gas utility sector, investors are considering direct methane emissions that are controlled by the utility. These metrics are reflected in the EEI-AGA ESG/Sustainability Reporting Template.

   In addition, a qualitative description of the utility's electric fleet transition, ESG goals, and GHG profile enables investors to assess its strategy and progress. The utility's fleet transition is also of relevance in assessing the electric sector contribution to economy-wide reductions. As the electric sector makes strides in reducing its own emissions , it is simultaneously driving emissions reductions for other companies, industries, and sectors across the economy, including transportation. Current ESG frameworks do not account for this economy-wide benefit, and in fact, could penalize the electric sector. Any Commission regulations need to be flexible and broad enough to transparently reflect this dynamic and the role of industries that drive reductions across the entire economy to achieve national-level climate goals.

   Our experience with the EEI-AGA ESG/Sustainability Reporting Template indicates that this modest number of factors has fulfilled investors' ESG disclosure needs to date. Furthermore, investors repeatedly have emphasized the need to make and keep our ESG climate-related disclosures concise, uniform, and comparable. Based on this investor guidance, our approach has been to provide brief and understandable disclosures focused on investors' stated needs.

b. Our experience also shows that including certain additional factors—such as derivative analysis of possible, forward-looking societal climate impacts or other externalities—while possibly interesting, does not meaningfully increase investors' ability to assess climate-related performance. Investors instead look for information that is directionally accurate and that can inform their views with respect to overall registrant performance and trajectory. Investors have expressly told us that more quantification or derivative analysis of climate impacts beyond a specific entity and its industry peers (for example, speculative impacts on broader climate measures or hypothetical inferences of any one entity's contribution toward global climate impacts) would not meaningfully improve, and possibly could hinder, the quality of their investment decisions.

We understand that various other stakeholders (e.g., academics and environmental organizations, etc.) use other types of quantified information for a range of purposes beyond those contemplated by securities laws—for example, scenario analysis, measures of macro climate impacts, physical climate risk assessment, and others. Beyond investors' clear indication that such information is not helpful for their purposes, this type of quantified information is speculative and should not be included in disclosures that may be required by the SEC and subject to the rigors and responsibilities attendant to inclusion in documents filed with the Commission. The Electric Power Research Institute's (EPRI's) report, Climate Disclosure and Voluntary Reporting Trends, provides additional details.[2]

c. We do not believe that disclosure across industries should be a one-size-fits-all standard. In particular, we are not aware of any single metric or small set of metrics that would apply universally. For example, carbon emissions from electric generation operations or methane intensity from natural gas networks are possibly the most recognized metrics for electric and gas utilities, respectively, but these would be of lesser relevance for a publicly traded consulting firm or a mall-based restaurant chain.

   Because the most relevant metrics will differ across industries, we recommend that, to the extent disclosure of specific metrics is required, they should be industry-specific metrics rather than uniform, across-the-board standards for all registrants, in a fashion analogous to the industry guides the SEC has adopted for other industry-specific disclosures. Therefore, our recommendation is for an industry-specific approach as a way to maximize the likelihood that registrants will provide investors with consistent, comparable and reliable information. This approach also would be consistent with the Commission's focus on principles-based disclosure.

d. Our members' observation is that a "robust carbon market" does not exist today, and any required disclosures based on a "market" that does not exist or is illiquid as a result

[2] Electric Power Research Institute, *Climate Disclosure and Voluntary Reporting Trends: 2019 Activity Survey Results* (Dec. 2020).

of opaque price discovery or infrequent transaction activity would be fraught with risk, as illustrated by historical issues with illiquid derivatives and commodities markets. Further, we believe that any such carbon market is not imminent, if it ever will exist, and inevitably will be driven by regulatory and legislative requirements that are subject to change over time, which could undermine the value of disclosures that incorporate a then-current carbon price. Using the approach we recommend, the existence or absence of such a market is not a condition for investor-focused, relevant disclosures.

3. **What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?**

   As described above, we believe that the best disclosures reflect the collaborative efforts of industries, investors, and other stakeholders. We also believe that any registrant disclosures should identify the source of the disclosure standards that are followed, which could be nationally recognized, industry-developed, or internally developed standards, such as the EEI-AGA ESG/Sustainability Reporting Template, which we specifically recommend adopting for our industry.[3]

   This approach would result in broad adoption of well-considered, industry-comparable and investor-supported standards over a reasonable period of time, but would not prohibit registrants from utilizing an approach that they believe is more appropriate. Investors will provide appropriate discipline. We note that four-digit SIC codes may be useful in identifying and grouping industries with similar operations, risks, and other characteristics that would lend themselves to comparability and the application of common standards.

4. **What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.? How should any such industry-focused standards be developed and implemented?**

[3] Refer to the Appendix for information about the EEI-AGA ESG/Sustainability Reporting Template.

As discussed above, our experience demonstrates that flexibility and the development of relevant disclosure standards by different industries, working with investors, will generate the most useful information for investors.

5. **What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)? Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?**

Our experience has been that groups focused specifically on developing climate-related disclosure standards often are not primarily focused on the goal of financial securities disclosure, which is to provide investors with the timely, accurate, and complete financially material information they need to make confident and informed investment decisions. As a related consequence, standards developed by such groups generally do not consider, and are not consistent with, the financial materiality threshold underlying effective, investor-focused disclosures under the securities laws. Further, such standards often are excessively lengthy and prescriptive, requiring disclosure of significant amounts of information that is not material, which is inconsistent with the Commission's emphasis on disclosure effectiveness through focused, appropriately brief, material registrant-specific information. One of the main reasons that EEI and AGA developed our template was that the existing disclosure standards and frameworks did not meet investor needs for industry-specific metrics for our sector based on investors' feedback.

We believe that it is appropriate to encourage registrants to disclose their climate-related information in a manner generally consistent with a recognized framework. We would not, however, impose on all registrants the requirement to use a specific reporting framework or even select from a short list of possible reporting frameworks from which all registrants would be required to choose. We recommend an approach that encourages development of the most relevant framework for each industry in consultation with investors and other stakeholders and do not believe that there is significant benefit from being restrictive in this regard.

We caution against delegating the development of public-company disclosure requirements to NGOs or private companies. The processes for standards development by NGOs and private disclosure companies often are not transparent and do not adequately reflect the input of the impacted investors and issuer companies as critical stakeholders. There simply can be no assurance that the disclosures sponsored by those groups reflect the input and needs of informed investors rather than those of special interests. None of these existing groups is subject to direct SEC oversight or indirect oversight as part of a self-regulatory organization, and delegation of rule-making authority to NGOs would be impermissible under the Administrative Procedures Act.

With these concerns noted, if a registrant wants to use NGO-developed standards, it could do so as we suggest above. Today, we believe that most companies would present disclosures that are consistent with TCFD's framework, as does the EEI-AGA ESG/Sustainability Reporting Template. We believe that the TCFD provides a reasonable framework for considering scenario analysis and the development of climate-related financial disclosure, without defining specific disclosure standards. However, other frameworks exist, such as the World Economic Forum's, and others likely will be created in the future that may be appropriate to consider.

6. **How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?**

   Our experience has shown that ESG disclosures and climate-related financial disclosures are nascent and evolving. Climate change disclosures will need to change as investor interest and the sustainability programs of registrants evolve and mature. By contrast, a prescriptive, rules-based approach could quickly become obsolete or irrelevant as investors' information needs evolve. The approach we recommend would support that evolution. In this regard, it will also be important to provide for a phased introduction of any new disclosure standards over time, particularly for smaller companies, and for all companies to the extent that new or extensive disclosures are required.

   We reiterate that we do not believe the development or oversight of public-company disclosure requirements can or should be delegated. The ability to delegate such power to a non-federal body would, in our view, require explicit Congressional statutory authorization that does not currently exist. It is critical that any standards that are mandatory be developed by the Commission with its proven track record of adopting high-quality standards consistent with its mission and statutory authorities, reporting requirements, and longstanding materiality principles. Even if there were legal authority for the Commission to delegate this important work to a NGO or other private entity, there is simply too much opportunity for any standards that are developed to be diverted by special interests from the primary purpose of informing investors and their investment decisions.

If the Commission determines that it is both legal and appropriate to designate an entity with specific responsibility for developing investor-focused climate-related disclosure standards that it could consider for final adoption, it should be an entity that embodies characteristics of time-tested organizations with proven track records of developing high-quality standards, similar to those of the FASB, which has been designated by the Commission as the accounting standard setter for public companies. Key relevant characteristics of the FASB include Commission oversight, a focused mission, a rigorous and open process, transparent and impartial funding, and sound governance, important aspects of which we discuss below. Subject to the oversight of its trustees and engagement with the Commission and its staff, the FASB standards-setting process could readily be applied to ESG-related disclosures.

The FASB is subject to Commission oversight, and its mission is squarely focused on setting standards that provide material information to investors and other users of financial reports. The conceptual framework and principles underlying its standards are applied in a well-documented, thorough process that is robust and inclusive through publicly seeking, openly deliberating, and comprehensively addressing the input of all stakeholders using the expertise of its Board members and staff. Subject to the oversight of its trustees and engagement with the Commission and its staff, its standards provide the reporting framework underlying the U.S. capital markets that the Commission oversees.

Another important characteristic of any entity developing standards for public company climate disclosures is a diverse, expert board that is representative of all relevant stakeholder interests. The FASB is composed of recognized experts drawn from the variety of constituencies affected by its pronouncements, including financial statement preparers, users, auditors, and regulators, as well as academics and private companies. Similarly, the PCAOB also includes representatives with diverse backgrounds in government, regulation, financial statement preparation and auditing, and law. Any entity designated to develop climate disclosure standards should be constituted to assure that all affected stakeholder interests are represented.

In addition to the aspects of process, funding, and composition that we highlighted above, two other matters related to such an entity's authority are important given the evolving but still immature nature of climate-related disclosures. First, to assure that such standards can be responsive to investor needs in an environment that is changing rapidly, it will be important for this entity to have the authority to interpret and apply its standards as new fact patterns arise or issues of investor interest change over time (for example, similar to the FASB's Emerging Issues Task Force). As explained earlier, we have found this to be the case in the evolution of our ESG template.

Second, given that climate change, and more broadly ESG, represents a new type of disclosure, and consistent with our concerns about the lack of authorization to delegate this responsibility to a NGO, we believe such any standards developed via delegation should be subject to formal endorsement by the SEC, similar to the model for final adoption of PCAOB standards, in order to provide additional assurance that such standards, and the process through which they are developed, are of the highest quality.

7. **What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated? Should any such disclosures be filed with or furnished to the Commission?**

As noted above, we proposed several possible approaches for climate-related disclosures, including a new Item in Part I of Form 10-K that identifies the location of the registrant's climate change disclosure. Several alternatives for publishing this information already are being widely used, such as posted sustainability reports (including the EEI-AGA ESG/Sustainability Reporting Template completed by our member companies), Global Reporting Initiative (GRI) reports, and disclosures by entities that have chosen to report using the metrics developed by SASB, among others. In light of our recommendation that registrants be permitted to adopt a recognized, industry-specific framework, such disclosures should include an explanation of the standards and framework applied, governance oversight, and similar items to the extent relevant. Further, any Commission-mandated disclosures should only be required at the parent company level.

We do not believe that other changes to Regulation S-K and, particularly, Regulation S-X are needed. And as also noted above, in every case such disclosures should be deemed furnished to, and not filed with, the Commission and should be subject to a safe harbor. While we recommend that registrants be given the option to use an existing third-party framework of their choice for climate disclosures under a furnished, not filed model, we reiterate that we do not support the appointment of a third-party to develop a reporting framework unless it is an independent entity created by the SEC.

8. **How, if at all, should registrants disclose their internal governance and oversight of climate-related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?**

   We believe that a general qualitative description of governance oversight could be provided, and since other governance matters already are included in the proxy statements (and some registrants already provide climate governance disclosure in response to investor interest), that vehicle may be a logical and appropriate location for similar matters for climate-related issues. As discussed above, our experience demonstrates that flexibility and the development of relevant disclosure standards by different industries, working with investors, will generate the most useful information for investors.

   As with disclosure standards generally, governance oversight will vary widely among registrants. Building upon the example above, a publicly-traded consulting firm or mall-based restaurant chain likely will need less governance oversight on climate change activities and disclosure than a large industrial business, and any disclosure requirement should accommodate that. In the case of utilities, our members' Boards are engaged extensively in oversight of climate-related matters. We believe that decisions as to metrics used for executive compensation purposes are best left to compensation committees, and required disclosure regarding executive compensation decisions already exists.

9. **What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple standard setters and standards? If there were to be a single standard setter and set of standards, which one should it be? What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements? If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?**

   For a variety of reasons, we urge the Commission to concentrate on industry-developed domestic standards as the best approach at this time. In the future, particularly as experience with initial disclosures enables evolution and refinement to meet investor needs, consideration could be given as to whether these initial standards could be modified to support international disclosures. We engaged with international utility members and investors on ESG and our EEI-AGA ESG/Sustainability Reporting Template. While we are aware of the International Organization of Securities Commission's (IOSCO's) vision for an International Sustainability Standards Board (ISSB) under the IFRS Foundation, we believe the near-term interests of stakeholders in the capital markets regulated by the Commission would be served best and in a more timely way by focusing on domestic standards first.

Therefore, we recommend the Commission prioritize standards applicable to registrants subject to its rules rather than the development of a single set of global standards. The challenges that the accounting standard setters have experienced in efforts to converge U.S. GAAP with IFRS are instructive. For example, although investors worldwide provide capital, securities regulation occurs on a more refined scope, as evidenced by the Commission's oversight of U.S. capital markets. The Commission's requirements are informed primarily by U.S. stakeholders, whose focus and information requirements may differ from those of stakeholders in other countries and regions. Therefore, we believe the information needs of each regulator's stakeholders should take priority over seeking a single set of global standards at the expense of timely progress toward this primary goal.

There are many important considerations and added complexities to address when determining climate disclosures at the global level. In particular, for the energy industry in the United States, operation of electric and gas utilities is highly regulated by state utility commissions and federal agencies. Furthermore, the model of using energy markets to assure reliable power, including RTOs and ISOs, could make application of a single global standard challenging. Additionally, investor and regulator expectations, existing disclosures, and measurements vary across the globe and certain international requirements are perceived as more prescriptive and costly.

These and other significant contrasts between the interests of stakeholders in Commission-regulated capital markets as compared to global interests must be thoughtfully considered so as to avoid the risk that different international views on climate and ESG matters may overly complicate or compromise high quality disclosure, decrease the competitiveness of U.S. capital markets, or create a disincentive for capital formation through robust, public markets overseen by the Commission.

As we noted earlier, climate disclosure standards are new, evolving, and subject to significant ongoing change as investor needs, perceived risks, and possible new responses are identified over time. Furthermore, the transition and physical risks, as well as opportunities, and climate impacts of companies in different countries and regions vary substantially worldwide, and the policy priorities of governments and regulators similarly diverge in dramatic ways in response to their most important stakeholders' interests. For all the reasons noted, we believe that establishing global climate reporting standards, while theoretically ideal, would be a Herculean and inefficient task and that the Commission and registrants should not delay their focus on better disclosure in order to achieve a global result.

10. **How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance? If there is an audit or assurance process or requirement, what organization(s) should perform such tasks? What relationship should the Commission or other existing bodies have to such tasks? What assurance framework should the Commission consider requiring or permitting?**

We acknowledge the importance of ensuring the reliability of climate-related disclosures, and based on our experience, our member companies have put in place a number of controls and procedures to ensure reliability. Therefore, we believe in the accuracy and completeness of our climate-related ESG disclosures in the EEI-AGA ESG/Sustainability Reporting Template, which we support for adoption as the recognized framework for ESG disclosures for our industry.

We do not believe that any additional certifications or reviews are necessary beyond measures already taken to assure reliability of all other information provided in disclosures under the same item within the SEC documents in which such disclosures are presented. Existing registrants generally have robust internal controls, compliance systems, and internal audit functions governing the presentation of financial information and related disclosures, processes and disciplines which would support new ESG disclosures. Furthermore, as a heavily regulated industry, our members' emissions are reported to and filed with state and federal regulatory agencies, and therefore there is a high level of assurance with climate-related data included in our ESG template. The development of those disclosures is subject to processes to assure consistency in each company's disclosures as well as comparability with others in our industry.

11. **Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management's annual report on internal control over financial reporting and related**

requirements should be updated to ensure sufficient analysis of controls around climate reporting? Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?

The Commission needs to be extraordinarily careful that climate disclosure requirements do not inadvertently create an opportunity for unnecessary litigation leading to costly, but largely useless, settlements. Climate change disclosure cases, in some instances, could result in significant additional direct and indirect costs to registrants and discourage voluntary disclosures beyond the minimum required for technical compliance. Deeming climate change disclosure to be "furnished" and not "filed" certainly will help in this regard.

The Commission also should provide an enhanced safe harbor provision for climate change disclosures similar to, and in line with, the protections afforded under the Private Securities Litigation Reform Act of 1995 for certain forward-looking statements. It bears repeating that climate change data is inherently uncertain—particularly scenario-based data and forward-looking models using the long time-horizons that typically are analyzed for such assessments—and the techniques and methodologies involved continue to evolve. Therefore, a safe harbor would allow companies to provide more robust information without requiring them to exhaust resources vetting it against every possible future outcome, regardless of probability.

12. **What are the advantages and disadvantages of a "comply or explain" framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules? How should this work? Should "comply or explain" apply to all climate change disclosures or just select ones, and why?**

We do not support a "comply or explain" approach assuming the adoption of industry-specific standards consistent with the process we recommend are adopted. As noted above, however, we believe that there should be flexibility in how registrants comply, and we believe that registrants should provide an explanation if they comply other than through the application of industry-accepted, nationally recognized approaches.

13. **How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities? What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management's Discussion and Analysis of Financial Condition and Results of Operations?**

We do not believe that the Commission needs to do anything further with respect to disclosure of climate-related risks and opportunities. The existing requirement to disclose material risk factors sufficiently captures the need to disclose climate-related risks, where material existing requirements, together with the approach we propose above, should assure appropriate risk disclosure.

Climate-related opportunities are speculative and generally are not appropriate for public disclosure except in a very conservative manner, consistent with emerging regulatory environmental and related regulatory regimes. While electric utilities believe that electrification of transportation can be a major opportunity, and gas utilities believe that Renewable Natural Gas (RNG) and hydrogen offer tremendous opportunities for gas distribution, we do not believe disclosure of these (or other) opportunities should be mandated. There simply is too great a risk for expensive litigation if these opportunities ultimately do not come to fruition. Furthermore, the existing framework under MD&A already requires disclosure of known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on financial results.

14. **What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?**

    We believe that the disclosure requirements need to apply to all businesses currently regulated by the Commission. To this end, we believe that the Commission has sufficient authority under the Investment Company Act of 1940 and the Investment Advisors Act of 1940 to require many private equity firms to make these disclosures on behalf of their portfolio companies or to cause those companies to make the disclosures.

15. **In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?**

    ESG disclosures are evolving, as are investor interests in different aspects of ESG. At present, information about the role of GHG emissions in climate change—under the "E" of "ESG"—clearly is the most pressing in terms of timing, as the existing SEC guidance on climate disclosure is more than a decade old. If the Commission wants the best possible disclosure with respect to climate change, we do not believe that the Commission should overburden registrants at the current time by requiring other new social ("S") and governance ("G") disclosures as well, some of which are addressed elsewhere (such as recent amendments to Regulation S-K to provide for human capital disclosures and existing Regulation S-K requirements and proxy statement disclosure trends regarding various governance topics).

Climate issues are obviously a very important component of the ESG framework. There has been an increasing amount of "S" and "G" disclosure in recent years, and investors and free-market pressure likely will continue to generate additional disclosure in these areas in due course. This is one reason why the newer versions of the EEI-AGA ESG/Sustainability Reporting Template have been revised to reflect additional "S" and "G" factors that we have found are important to our investors and other stakeholders. While these important issues need to be addressed appropriately, that should be done in a phased, deliberate manner.

Conclusion

In conclusion, the electric and gas utility industry is committed to ESG and climate-related initiatives, and we support the Commission's focus on the related disclosures. Our experience in developing the EEI-AGA ESG/Sustainability Reporting Template, the first-of-its-kind, sector-wide ESG reporting template with a focus on environmental and climate disclosure, has helped to inform our comments to the Commission.

Although climate change, and ESG more generally, attracts a large amount of attention from a broad cross-section of individuals and organizations worldwide, we believe the Commission can achieve significant progress in this area if it focuses its effort on information that is material to investors and provides registrants with appropriate flexibility to make disclosures that meet investor needs, rather than by mandating one-size-fits-all solutions that could obscure the disclosures that are most important to investors.

Deeming climate change and other ESG disclosures to be "furnished" and not "filed" will be important, along with providing enhanced safe harbor provisions similar to, and in line with, the protections afforded under the Private Securities Litigation Reform Act of 1995 provided for certain forward-looking statements.

We also caution against delegating the development of public-company disclosure requirements to NGOs or private disclosure companies. These entities are not subject to

Commission oversight, do not have a history of rule-making processes of the caliber that are essential for good public-company disclosure, and often have a primary mission other than providing investors with the timely, accurate, and material financial reporting information they need to make informed investment decisions.

However, should the Commission determine that it has the authority to designate an entity to develop climate-related disclosure standards for registrants, we recommend one with important organizational and process characteristics found in the FASB and PCAOB, including a focused mission, an expert board representing the full diversity of stakeholder interests, a rigorous and open process, transparent and impartial funding, and sound governance, complemented by Commission oversight before such standards are finalized. Additionally, focusing on the development of standards for registrants subject to the Commission's jurisdiction should take priority over admirable, but likely less timely, consideration of a single set of global standards.

* * * * * * *

Thank you for the opportunity to provide comments on the questions that you raised, and we look forward to working with the Commission as it considers ESG and climate-related financial disclosures.

Respectfully Submitted,

/s/ Richard F. McMahon, Jr.

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Edison Electric Institute
[redacted]

/s/ Lori Traweek

Lori Traweek
Chief Operating Officer
American Gas Association
[redacted]

CC : Caroline A. Crenshaw, Commissioner
Allison Herren Lee, Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
John Coates, Acting Director, Division of Corporation Finance

APPENDIX

EEI-AGA ESG/Sustainability Template – Version 3

Below is information about the EEI-AGA ESG/Sustainability Template – Version 3. More details about the template, the process through which it has been developed and updated, and links to our members' most recent reports using the template are here for EEI members and here for AGA members. This version will be used for reporting later in 2021.

EEI
AGA American Gas Association

ESG/Sustainability Template – Version 3

INTRODUCTION AND TEMPLATE DESIGN

This document is a voluntary environmental, social, governance, and sustainability-related ("ESG/Sustainability") reporting template for regulated electric and gas companies. It was developed by the Edison Electric Institute (EEI) and the American Gas Association (AGA) under the guidance of the joint EEI-AGA member company ESG/Sustainability *Steering Committee* and an ESG/Sustainability *Investor Group*. The *Steering Committee* consists of a diverse group of member company representatives from various disciplines (e.g., Accounting, Environment, ESG/Sustainability, Finance/Treasury, Investor Relations, and Legal), and the *Investor Group* consists of a diverse group of institutional investors from various disciplines (e.g., Asset Management, ESG/Sustainability, Investment Banking and Research Analysis).

This voluntary template explicitly allows for flexibility in what is reported by each company. A company may, at their discretion, choose to post this information on the web and/or use it to supplement existing ESG/Sustainability reports. Companies may elect to include or exclude any of the topics outlined herein. However, one goal of this initiative is to provide consistent information to investors, so companies are encouraged to provide information. It is important to note that EEI, AGA, and our member companies do not consider all ESG/Sustainability information to be financially material and intend this ESG/Sustainability information to be supplemental to the information that is required to be provided in response to U.S. Securities and Exchange Commission's (SEC) reporting requirements, as currently constituted. To the extent that any of the information in this template is considered financially material by an individual company, such information would already be captured in the appropriate SEC required disclosures of that company. The ESG/Sustainability information in this template is therefore being provided to investors outside of the SEC reporting process.

Member companies that elect to complete the template are encouraged to convey the purpose of their participation in providing this information. A sample introductory note is provided for member company use in their completed template:

> The template has been developed in response to the desire of investors and other stakeholders for ESG/Sustainability information that is consistent across the sector in terms of accessibility, content, timing, and presentation. Companies that participate in voluntarily providing ESG/Sustainability information in this format share a common goal to provide investors with relevant information that:
>
> - Allows integration of ESG/Sustainability data and performance.
> - Provides clarity of risks (e.g., stranded assets, regulatory issues, etc.) and opportunities (e.g., investments in renewables, etc.) and how they are being managed.
> - Provides insight into growth strategy, assumptions, and future trajectory.
> - Provides both qualitative and quantitative information.
> - Serves as a primary reporting channel for consolidated ESG/Sustainability information relevant to investors and other stakeholders.

APPENDIX

EEI-AGA ESG/Sustainability Template – Version 3

Companies are encouraged to publish the template by the third quarter (3Q) of each year to consistently provide investors with information from the prior calendar year (e.g., companies provide investors with calendar year 2020 data by 3Q 2021). Investors prefer this information sooner rather than later, so companies are also encouraged to complete the template earlier in the year if possible.

The ESG/Sustainability template is divided into two sections: (1) a qualitative discussion as outlined at the end of this document, and (2) a set of quantitative metrics provided in a separate Microsoft Excel spreadsheet. Each section consists of specific focus areas that were identified by the *Investor Group* and refined by the *Steering Committee*, as outlined and defined below.

QUALITATIVE

1. **ESG/Sustainability Governance:** Management and oversight of ESG/Sustainability.
2. **ESG/Sustainability Strategy:** Practices, programs, and initiatives designed to support the company's transition to a lower carbon and increasingly sustainable energy future.

QUANTITATIVE

The Excel-based data reporting template is customized for regulated electric and gas companies. Portfolio, emissions, and resources are included on the 'EEI Metrics' tab for electric company disclosure, while gas-related metrics are included on the 'AGA Metrics' tab for gas company disclosure. Data for these areas should include as much historical, current, and forward-looking information as is appropriate for each company.

3. **Portfolio:** Metrics related to an electric company portfolio such as power generation data by resource type.
4. **Emissions:** Metrics on electric company GHG emissions and criteria emissions.
5. **Resources:** Metrics on electric company human resources and natural resources.
6. **Gas-Related:** Metrics related to gas company GHG emissions and system infrastructure information.

Definitions for the AGA metrics are included on the right side of the 'AGA Metrics' tab. The Excel spreadsheet also includes an 'EEI Definitions' tab to define metrics, specify units of measure and provide a source for each definition. To the extent possible, this page was developed using definitions that are already generally accepted in the industry. EEI utilized efforts already undertaken by the Electric Power Research Institute (EPRI) Energy Sustainability Interest Group (ESIG) by including common definitions that were agreed upon through an in-depth stakeholder process.

Disclaimer: For the ultimate users of this data, it is important to note that the emissions data contained in each template relates only to the particular company filling it out. Since the template allows the reporting of both generation and purchased power, emissions from one entity's generation could be reflected as purchased power in another entity's report. Therefore, it is not possible to aggregate the various reports to determine total sector emissions, as doing so would overstate the total emissions for the participating companies.