

December 9, 2020

Hon. Michelle L. Phillips
Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

VIA ELECTRONIC SUBMISSION

Case No: 20-M-0499 – In the Matter Regarding the Need for Reporting Risks
Related to Climate Change

Re: Joint Comments of Environmental Defense Fund, Institute for Policy
Integrity at NYU School of Law, and the Sabin Center for Climate Change
Law at Columbia Law School

Dear Secretary Phillips,

Environmental Defense Fund (EDF), the Institute for Policy Integrity at New York University School of Law (Policy Integrity), and the Sabin Center for Climate Change Law at Columbia Law School (Sabin Center) respectfully submit the following joint comments to the New York Public Service Commission (the Commission) in response to its October 15, 2020 Order Instituting Proceeding (Order), as modified by the grant of an extension of time for comment dated November 14, 2020.

EDF is a non-partisan, non-governmental environmental organization representing over two million members and supporters nationwide. Since 1967, EDF has linked law, policy, science, and economics to create innovative and cost-effective solutions to today's most pressing environmental problems. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through advocacy and scholarship in the fields of administrative law, economics, and public policy. Its staff has developed particular expertise in the areas of energy-sector resilience to climate impacts and climate risk disclosure, and recently hosted a conference, "Corporate Climate Risk: Assessment, Disclosure, and Action," at which leading experts explored that topic. The Sabin Center develops and promulgates legal techniques to address climate change and trains law students and lawyers in their use. The Sabin Center has

worked extensively on issues relating to climate resilience in the electric utility sector and has just published a major report on the topic (co-authored with EDF).¹

Sincerely,

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¹ ROMANY M. WEBB, MICHAEL PANFIL & SARAH LADIN, CLIMATE RISK IN THE ELECTRICITY SECTOR: LEGAL OBLIGATIONS TO ADVANCE CLIMATE RESILIENCE PLANNING BY ELECTRIC UTILITIES (2020), <http://blogs.edf.org/climate411/files/2020/12/Climate-Risk-Electricity-Sector.pdf>.

Joint Environmental Defense Fund, Institute for Policy Integrity, and Sabin Center Comments on the Need for Reporting Climate Change-Driven Risks

After highlighting the importance and timeliness of adopting a more uniform and comprehensive approach to reporting climate-related financial risk for New York utilities, our comments respond to the questions posed by the Commission in its October 15, 2020 Order.

I. Background

The Financial Stability Board’s Task Force on Climate-related Financial Disclosures (TCFD) identified two basic categories of financial risk related to climate change: “physical risks” arising from direct impacts of climate change on assets, access to resources, and operations; and “transition risks” arising from changes in policy, law, technology, and markets that address mitigation and adaptation requirements related to climate change.² Both categories of risks are coming into focus for a wide array of institutions and actors, including financial institutions,³ ratings agencies,⁴ and government agencies,⁵ which are increasingly recognizing the urgent need to understand the financial implications of climate change and climate-related policies.

Climate-related risks are, in many instances, very large in magnitude: a 2019 analysis of 215 of the world’s largest businesses identified nearly \$970 billion in potential financial risk from climate change, with over half of this risk described as “likely, very likely, or virtually certain to materialize . . . [within] five years or earlier[.]”⁶ Another recent analysis found that, over the slightly longer time horizon of fifteen years, decarbonization efforts could result in the erasure of \$1-4 trillion in economic value due to changes in the valuation of fossil fuel assets.⁷

² TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, FINAL REPORT: RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES 5–6 (2017), <https://perma.cc/QR9J-3636> [hereinafter TCFD REPORT].

³ BLACKROCK, EXECUTIVE SUMMARY: OUR APPROACH TO SUSTAINABILITY 3 (2020), <https://perma.cc/27ER-UVNS>.

⁴ Moody’s Investors Service, *Research Announcement: Moody’s Including Four Twenty Seven Climate Risk Data into Research and Ratings on US CMBS and CRE CLOs* (Aug. 11, 2020), https://www.moody.com/research/Moodys-including-Four-Twenty-Seven-climate-risk-data-into-research--PBS_1241276; Moody’s Investors Service, *Research Announcement: Moody’s - Scenario Analysis Key Tool in Assessing Credit Impact of Climate Change* (Mar. 10, 2020), https://www.moody.com/research/Moodys-Scenario-analysis-key-tool-in-assessing-credit-impact-of--PBC_1217369.

⁵ COMMODITY FUTURES TRADING COMM’N CLIMATE-RELATED MARKET RISK SUBCOMM. OF THE MARKET RISK ADVISORY COMMITTEE, MANAGING CLIMATE RISK IN THE U.S. FINANCIAL SYSTEM 11 (2020), <https://perma.cc/UT9M-FG2Y> [hereinafter CFTC REPORT]; BD. OF GOVERNORS OF THE FED. RESERVE SYS., FINANCIAL STABILITY REPORT (Nov. 2020), <https://perma.cc/ZV73-7QRM> [hereinafter FED. RESERVE REPORT] Huw Jones, *Bank of England to Require Company Disclosures on Climate Risks*, INS. J. (Oct. 19, 2020), <https://perma.cc/8S7S-5M3C>; Justin Gundlach, *Energy Transition and Climate Risks Included in New French Financial Disclosure Rules*, CLIMATE L. BLOG (Mar. 5, 2016), <https://perma.cc/6QXL-PR3F>.

⁶ CDP, *Major Risk or Rosy Opportunity: Are Companies Ready for Climate Change?* (2019), <https://perma.cc/X486-ER7Y>; CDP, *World’s Biggest Companies Face \$1 Trillion in Climate Change Risks* (June 4, 2019), <https://perma.cc/GK23-398B>.

⁷ J.F. Mercure et al., *Macroeconomic Impact of Stranded Fossil Fuel Assets*, 8 NATURE CLIMATE CHANGE 588 (2018).

The investment community is increasingly calling for disclosure requirements to steer the assessment and management of long-term systemic risks posed by climate change.⁸ Larry Fink, the Chairman and CEO of BlackRock, which manages over \$7 trillion in assets, has said that “[c]limate change has become a defining factor in companies’ long-term prospects” and that the “evidence on climate risk is compelling investors to reassess core assumptions about modern finance.”⁹ For these reasons, Fink has argued that comprehensive and comparable disclosure is needed “to inform [a company’s] strategic responses to climate risk by benchmarking their performance against peer organizations.”¹⁰ The Commodity Futures Trading Commission’s (CFTC) Climate Related Market Risk Advisory Subcommittee recently echoed that view in a path breaking report on managing climate risk in the U.S. financial sector.¹¹ Likewise, the Federal Reserve for the first time highlighted the implications of climate change for financial stability in its biannual report.¹²

As New York’s public utilities and the Commission know well, several features of their business model cause them to be highly exposed to climate-related physical and transition risks. Utilities are capital-intensive, and their assets and operations are susceptible to extreme weather events, as demonstrated during Superstorm Sandy and Hurricane Irene.¹³ Climate change is already increasing the severity of extreme events and leading to other non-event based impacts, such as temperature and sea level rise, which affect utility assets directly and also compound the acute risks of extreme events.¹⁴ For example, higher average and extreme temperatures will increase

⁸ Herman K. Trabish, *BlackRock, Morgan Stanley to Utilities: Tackle Climate-Related Risks or Lose Market Value*, UTILITY DIVE (Apr. 6, 2020), <https://perma.cc/TCP2-GVY4>.

⁹ Larry Fink, *A Fundamental Reshaping of Finance*, BLACKROCK (Jan. 14, 2020), <https://perma.cc/RCG7-EC73>.

¹⁰ CFTC REPORT, *supra* note 5, at 91.

¹¹ *Id.* at 14. Notably, that CFTC Subcommittee’s members represent not only large financial institutions but also the agriculture and energy sectors, among others.

¹² FED. RESERVE REPORT, *supra* note 5, at 58-59.

¹³ *See, e.g.*, Consolidated Edison Inc., Annual Report (Form 10-K) (2013), <https://perma.cc/8HNV-BMCV> (Superstorm Sandy caused extensive physical damage to the distribution system. Consolidated Edison Company of New York and Orange and Rockland Utilities incurred response and restoration costs of \$363 million and \$98 million, respectively. Most of these costs were passed on to ratepayers.).

¹⁴ The physical risks to utility systems and assets from climate change have been the subject of much previous research. *See e.g.*, Craig Zamuda et al., *Energy Supply, Delivery, and Demand*, in IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT 174 (D.R. Reidmiller et al. eds., 2018), <https://perma.cc/P9QM-YJHF>; JAYANT SATHAYE ET AL., ESTIMATING RISK TO CALIFORNIA ENERGY INFRASTRUCTURE FROM PROJECTED CLIMATE CHANGE 9-50 (2011), <https://perma.cc/EX2M-8828>; PETER CAMPBELL JOHNSTON ET AL., CLIMATE RISK AND ADAPTATION IN THE ELECTRIC POWER SECTOR (2012), <https://perma.cc/XC2Q-YVHK>; U.S. DEP’T OF ENERGY, CLIMATE CHANGE AND THE U.S. ENERGY SECTOR: REGIONAL VULNERABILITIES AND RESILIENCE SOLUTIONS 189 (2015), <https://perma.cc/K9FZ-V7J5>; Ariel Miara et al., *Climate and Water Resource Change Impacts and Adaptation Potential for US Power Supply*, 7 NAT. CLIMATE CHANGE 793 (2017), <https://perma.cc/AA5T-TUEL>; MOLLY HELLMUTH ET AL., ADDRESSING CLIMATE VULNERABILITY FOR POWER SYSTEM RESILIENCE AND ENERGY SECURITY: A FOCUS ON HYDROPOWER RESOURCES (2017), <https://perma.cc/9AJU-VEDC>; JUSTIN GUNDLACH & ROMANY WEBB, CLIMATE CHANGE IMPACTS ON THE BULK POWER SYSTEM: ASSESSING VULNERABILITIES AND PLANNING FOR RESILIENCE 4–13 (2018), <https://perma.cc/353Y-RSGB>; ANNA M. BROCKWAY & LAUREL N. DUNN, WEATHERING ADAPTATION: GRID INFRASTRUCTURE PLANNING IN A CHANGING CLIMATE 5-13 (2019), <https://perma.cc/LH5J-DZME>.

demand for electricity, while also impairing the operation of generation, transmission, and distribution infrastructure, potentially leading to more service outages.¹⁵

Moreover, consistent with the emissions reductions schedule mandated by New York’s 2019 Climate Leadership and Community Protection Act (CLCPA), utilities that provide energy services must find ways to transition to low- or zero-emission alternatives to emitting resources like natural gas.¹⁶ As the *New York State Decarbonization Pathways Analysis* shows,¹⁷ the presently widespread reliance on natural gas in commercial and residential buildings means that gas utilities are especially likely to be subject to acute transition risks.

Notably, though for different reasons, risks of both types are increasingly foreseeable to utilities. Improvements in downscaled climate modeling, attribution science, and risk assessment make physical risks easier to anticipate and plan for.¹⁸ As for transition risks, the CLCPA is a world-leading example of a law that establishes coherence and certainty in relation to how New York will respond to the causes and effects of climate change.¹⁹

Even though the need for utilities to account for the costs of dealing with climate change is increasingly recognized, and the tools to assess the relevant risks continue to improve, the approaches currently taken to disclosing climate-related risks are fragmented, inconsistent, and generally insufficient—likely because they are not required to be otherwise. Financial disclosure obligations currently imposed under federal law do not require the specificity needed to reveal climate-related risk.²⁰ They have yielded general statements and boilerplate language that does little to inform investors and other stakeholders either about the nature and financial implications of the climate-related risks facing utilities or about utilities’ plans to respond to those risks.²¹

¹⁵ Zamuda, *supra* note 12, at 193.

¹⁶ Climate Leadership and Community Protection Act § 2, Env’t Conserv. L. § 75-0107(1) (establishing overarching emissions reduction targets).

¹⁷ E3, NEW YORK STATE DECARBONIZATION PATHWAYS ANALYSIS 11 (June 24, 2020) (estimating extent and pace of need to replace natural gas with electric systems in buildings in order to meet emissions reduction targets).

¹⁸ *New York City Panel on Climate Change 2019 Report: Executive Summary*, 1439 ANN. N.Y. ACAD. SCI. 11, 12–16 (2019) [hereinafter NPCC 2019] (describing new methods and modeling outputs); Michael Burger, Jessica Wentz & Radley Horton, *The Law and Science of Climate Change Attribution*, 45 COLUM. J. ENV’T. L. 57 (2020). Climate data providers have developed tools to assess physical risk on a granular level. For example, Four Twenty Seven’s Physical Climate Risk Application allows users to see asset-level information on exposure to floods, sea level rise, hurricanes and typhoons, heat stress, and water stress. FOUR TWENTY SEVEN, PHYSICAL CLIMATE RISK APPLICATION, <https://perma.cc/V5ZM-37XL>.

¹⁹ David Roberts, *New York Just Passed the Most Ambitious Climate Target in the Country*, VOX (July 22, 2019), <https://www.vox.com/energy-and-environment/2019/6/20/18691058/new-york-green-new-deal-climate-change-cuomo>; see also Justin Gundlach & Elizabeth Stein, *Harmonizing States’ Energy Utility Regulation Frameworks and Climate Laws: A Case Study of New York*, 41 ENERGY L.J. 211 (2020) (explaining how CLCPA constitutes a cohering consolidation of previously inconsistent policies).

²⁰ The Biden Harris Campaign lists “[r]equiring public companies to disclose climate risks and the greenhouse gas emissions in their operations and supply chains” among the measures that the Biden Administration plans to adopt after the January 2021 inauguration. Biden-Harris Campaign, *The Biden Plan for a Clean Energy Revolution and Environmental Justice*, <https://joebiden.com/climate-plan/> (last visited Nov. 10, 2020); see also Umair Irfan, *We Asked Joe Biden’s Campaign 6 Key Questions About His Climate Change Plans*, VOX (Oct. 22, 2020), <https://www.vox.com/21516594/joe-biden-climate-change-covid-19-president> (indicating that the Biden Administration plans to adopt this measure through an executive order).

²¹ SUSTAINABILITY ACCOUNTING STANDARDS BD., THE STATE OF DISCLOSURE 2017: AN ANALYSIS OF THE EFFECTIVENESS OF SUSTAINABILITY DISCLOSURE IN SEC FILINGS 2 (2017) [hereinafter SASB 2017 REPORT]

Climate-specific financial disclosure rubrics—like those cited by the Commission in its Order—are voluntary,²² and New York operating utilities have not made use of them in their financial reports. Mandatory disclosure standards are necessary, and the Commission’s Order is a timely and important step toward greater—and much needed—clarity and coherence with respect to the identification and disclosure of climate-related risks by utilities.

New York is well positioned to lead on utility-specific climate-related disclosure requirements. Four features of New York’s situation support the endeavor.

First, New York State has been the subject of particularly focused examination with respect to the impacts of climate change and options for adapting to those impacts, including investments in greater energy sector resilience. The New York State Energy Research and Development Authority (NYSERDA) commissioned the ClimAID study of climate impacts and adaptation needs from a trio of universities in 2011 and updated key elements of the study in 2014.²³ NYSEDA has also published and updated a climate change adaptation research plan, which covers the energy sector.²⁴ The New York City Panel on Climate Change has conducted and published three rounds of downscaled, region-specific climate modeling to inform policymakers and others about expected changes to key features of the climate, including temperature, precipitation, and sea level rise;²⁵ a fourth round is currently underway.²⁶ In addition, the New York Independent System Operator, which is responsible for administering New York’s wholesale electricity markets, recently published a two-part study of climate-driven impacts on electricity demand and power system reliability in New York State.²⁷ Taken together, these studies offer an especially rich basis for utilities seeking to comply with mandatory disclosure of physical risks.

Second, as mentioned above, the CLCPA, which entered into force in 2020, lends certainty and coherence to several key aspects of New York’s future energy and climate policy. Although details about the implementation of the CLCPA’s requirements will take time to develop and

(finding, based on an analysis of existing sustainability disclosure in Form 10-K or 20-F filings for the top companies across 79 industries, including Utilities, that “the most common form of disclosure . . . was generic boilerplate language, which is inadequate for investment decision-making”); *see also* Commission Guidance Regarding Disclosure Related to Climate Change, Exchange Act Release No. 61,46, 75 Fed. Reg. 6290 (Feb. 8, 2010).

²² *See, e.g.*, TCFD REPORT, *supra* note 2; SASB 2017 REPORT, *supra* note 21.

²³ Stephen A. Hammer et al., *Ch. 8: Energy*, in CLIMAID: RESPONDING TO CLIMATE CHANGE IN NEW YORK STATE 255 (2011), <https://perma.cc/B7D5-SDSP> (identifying vulnerabilities, options for adaptation, and knowledge gaps to fill with further research).

²⁴ NEW YORK STATE ENERGY RSCH. & DEV. AUTH., NYSEDA ENVIRONMENTAL RESEARCH PROGRAM PLAN – RESEARCH AREA 2: CLIMATE CHANGE ADAPTATION (2019), <https://perma.cc/6L8B-6JX9>.

²⁵ Michael R. Bloomberg, Jeffrey D. Sachs & Gillian M. Small, *Forewords: Climate Change Adaptation in New York City: Building a Risk Management Response*, 1196 ANN. N.Y. ACAD. SCI. 1, 1-3 (2010); *see also* NPCC 2019, *supra* note 18.

²⁶ Press Release, Mayor de Blasio Appoints Leading Scientific Experts to the Fourth New York City Panel on Climate Change (June 11, 2020), <https://perma.cc/B2NF-2BPE>.

²⁷ N.Y. INDEP. SYS. OPERATOR, CLIMATE CHANGE IMPACT STUDY PHASE I: LONG-TERM LOAD IMPACT (2019), <https://perma.cc/5JEQ-8YZ2>; N.Y. SYS. OPERATOR, CLIMATE CHANGE IMPACT PHASE II: AN ASSESSMENT OF CLIMATE CHANGE IMPACTS ON POWER SYSTEM RELIABILITY IN NEW YORK STATE (2020), <https://perma.cc/XMX8-7QMG>.

promulgate, its overarching specifications and mandates provide utilities with clear direction about the energy transition and their role in it. The Commission, the Department of Environmental Conservation, and various other entities are already engaged in efforts to spell out in greater detail how the transition to a decarbonized energy sector will proceed.²⁸ Further, the Energy Efficiency and Buildings Advisory Panel, which was established pursuant to the CLCPA to recommend policy options to the Climate Action Council, is presently developing recommendations for how to address the urgent need to replace natural gas service with a mix of greater energy efficiency and electric substitutes.²⁹ These regulatory measures and other recommendations will help guide utilities as they encounter and deal with specific transition risks, such as potentially stranded assets that cease to be used before the end of their useful life.³⁰

Third, directing utilities to identify and disclose climate-related risks is not new for the Commission, which first instructed utilities to conduct climate change vulnerability assessments in 2014.³¹ Consolidated Edison Company of New York, Inc. (Con Ed), which undertook significant post-Sandy resilience efforts from 2013 to 2016,³² completed the first of those studies in 2019.³³ Utilities' obligation to assess their climate-related vulnerabilities serves as a foundation for the development of climate-related risk disclosures.

Fourth, the Superintendent of New York's Department of Financial Services (DFS) recently announced that the roughly 1,500 financial institutions and 1,800 insurance companies operating in the state and subject to DFS's authority must "start integrating the financial risks from climate change into their governance frameworks, risk management processes, and business strategies," and "start developing their approach to climate-related financial risk disclosure" with the TCFD's framework in mind.³⁴ Although these directives do not apply directly to utilities, they

²⁸ See, e.g., Proposed 6 NYCRR Part 496 (Statewide Emissions Limits), vol. XLII N.Y. State Reg. 5 (Aug. 19, 2020); N.Y. DEP'T ENV'T CONSERV., ESTABLISHING A VALUE OF CARBON: GUIDELINES FOR USE BY STATE AGENCIES--PROPOSAL FOR PUBLIC REVIEW (2020); N.Y. Pub. Serv. Comm'n, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*, Order Instituting Proceeding, Case 20-G-0131 (Mar. 19, 2020).

²⁹ Energy Efficiency and Housing Advisory Panel--Meeting 3, at 36, 40 (identifying emissions attributable to buildings subsectors and fuel type and noting potential need to revise capital equipment depreciation rates); Energy Efficiency and Housing Advisory Panel--Meeting 1, at 13, 22, 34 (Sept. 16, 2020) (depicting need for rapid transition away from present reliance on legacy natural gas systems for buildings, and especially residential space heating).

³⁰ Gundlach & Stein, *supra* note 19 at 231–32.

³¹ N.Y. Pub. Serv. Comm'n, Order Approving Electric, Gas, and Steam Rate Plans in Accord with Joint Proposal, Case 13-E-0030 (Feb. 21, 2014), [https://climate.law.columbia.edu/sites/default/files/content/docs/Final-Order-2014-02-21%20\(1\).pdf](https://climate.law.columbia.edu/sites/default/files/content/docs/Final-Order-2014-02-21%20(1).pdf).

³² Craig D. Zamuda, *Climate Change's Impacts on the Nation's Electricity Sector*, in EVALUATING CLIMATE CHANGE IMPACTS 291–92 (Vyacheslav Lyubchich et al. eds. 2021).

³³ CONSOLIDATED EDISON, CLIMATE CHANGE VULNERABILITY STUDY (2019), <https://perma.cc/L7LF-F84W>. Specifically, the study looked at two emissions pathway scenarios, RCP 2.5 and a business-as-usual scenario, projecting out to the year 2080. The study concluded that Con Ed must invest between \$1.8 and \$5.2 billion to fortify its physical infrastructure so it can better withstand climate-related stressors and shocks. *Id.*; see also Craig D. Zamuda, *Resilience Management Practices for Electric Utilities and Extreme Weather*, 32 ELEC. J. 106642 (2019).

³⁴ Letter from Linda A. Lacewell, Superintendent, N.Y. State Dep't Fin. Servs., to Chief Executive Officers or the Equivalents of New York State Regulated Financial Institutions, Re: Climate Change and Financial Risks (Oct. 29, 2020), <https://perma.cc/EQ9E-B8NM>; Letter from Linda A. Lacewell, Superintendent, N.Y. State Dep't Fin. Servs.,

are likely to help inform utilities' approach to their disclosure obligations by indicating what sort of information lenders, insurers, and others will require pursuant to their own approaches to governance and risk management. That these directives will likely be developed in parallel with whatever rubric the Commission adopts for utilities means that the two agencies should coordinate their efforts to develop disclosure requirements and approaches to enforcement in order to ensure that their directives are compatible and mutually supportive.³⁵

In sum, New York's utilities face significant physical and transition risks due to climate change, yet have not, to date, been required to disclose those risks in a way that would make them decision-useful to the financial sector and others. The Commission is right to identify an urgent need to fill this gap with more detailed and consistent disclosure of climate-related risks. Such disclosure would more appropriately inform not only investors and the Commission, but also ratepayers and utilities themselves. Fortunately, because of the attention that has already been paid to these risks in New York State, and because of other existing legal requirements, New York's utilities will be able to draw on a deep reservoir of New York-specific research and relevant expertise when discharging such a disclosure obligation.

II. Responses to the Commission's Questions

Question 1) What are the pros/cons and costs/benefits of providing climate-related risk disclosure?

Requiring climate-related risk disclosures by electric and gas utilities would result in the publication of more comparable, granular, and actionable information about the various physical and transition risks each utility faces as well as whether and how those risks are being managed. As noted in the Commission's Order and confirmed in numerous other reports, such information is highly useful to investors, enabling them to better "understand how climate-related issues may affect a [utility's] business strategy and financial planning" and thus make "more informed investment decisions."³⁶ In the 2019 Global Investor Statement to Governments on Climate

to New York Domestic and Foreign Insurance Companies, Re: Climate Change and Financial Risks (Sept. 22, 2020), <https://perma.cc/2KQU-SXKZ>.

³⁵ Additionally, New York State has been a leader in enforcing climate disclosure. In 2007, the New York Attorney General's Office used its authority under the Martin Act's broad anti-fraud provisions to subpoena information from various energy companies regarding their "analyses of [their] climate risks and [their] disclosures of such risks to investors." *E.g.*, Letter from Katherine Kennedy, Special Deputy Att'y General, to Bruce Williamson, Dynegy, Inc., Chairman & CEO (Sept. 14, 2007), <https://perma.cc/V6G7-62WV>; Letter from Katherine Kennedy, Special Deputy Att'y General, to Richard Kelly, Xcel Energy Chairman, President & CEO (Sept. 14, 2007), <https://perma.cc/NCJ3-LLUE>. These investigations resulted in settlement agreements in which both Dynegy and Xcel agreed to include an analysis of the financial risks associated with climate change in their annual reports to the SEC. *See, e.g.*, Press Release, Cuomo Reaches Landmark Agreement with Major Energy Company, Xcel Energy, to Require Disclosure of Financial Risks of Climate Change to Investors (Aug. 27, 2008), <https://perma.cc/7NK2-7HNS>; Press Release, Attorney General Cuomo, Joined by Vice President Gore, Announces Agreement with Major Energy Company, Dynegy, Inc. (Oct. 23, 2008), <https://perma.cc/2CMN-Y99C>.

³⁶ N.Y. Pub. Serv. Comm'n, Order Instituting Proceeding, Case 20-M-0499, at 2 (Oct. 14, 2020); *see also, e.g.*, FIN. STABILITY BD., PROPOSAL FOR A DISCLOSURE TASK FORCE ON CLIMATE-RELATED RISKS 2 (2015), <https://perma.cc/SZ8Y-FCVW> (noting that improved disclosure would enable investors and financial market participants to price climate-related risks and thus better factor them into their investment and other decisions); TCFD REPORT, *supra* note 2, at 1 (concluding that "the lack of consistent information hinders investors and others from considering climate-related issues in their asset valuation and allocation processes"); CFTC REPORT, *supra*

Change, investors managing over \$37 trillion called for “reliable and decision-useful” disclosures to facilitate the valuation of climate-related risks and opportunities.³⁷ It is, however, not just investors who would benefit from enhanced climate-related risk disclosures.

Electric and gas utilities themselves, as well as ratepayers and the Commission, would also derive significant benefits from increased transparency of climate-related risks. In 2014, the Commission declared that all utilities have an “obligation” to consider climate-related risks, and urged them to “consult the most current data to evaluate the climate impacts anticipated in their regions over the next years and decades.”³⁸ To date, only Con Ed has published a comprehensive assessment of the physical risks to its system from the impacts of climate change.³⁹ Neither Con Ed nor any other utility has published a similar assessment of transition risks associated with climate change.⁴⁰ Such assessments need to be undertaken for utilities to make complete, reliable, and decision-useful climate-related risk disclosures. A disclosure requirement would, therefore, force utilities to reckon with the impacts of climate change as the Commission has previously recommended. As a result, utilities would be better able to integrate climate considerations into their planning and decision-making, and more effectively prepare for and manage climate-related risks.⁴¹ Further, with a universal disclosure requirement, utilities could compare their risk management strategies to those of their peers, and learn from each other.

Utilities and ratepayers may realize direct financial benefits from more fully analyzing and disclosing climate-related risks, for instance, in the form of lower borrowing and insurance costs. BlackRock’s Larry Fink recently warned that, “[i]n the absence of robust [climate-related risk] disclosures, investors . . . will increasingly conclude that companies are not adequately managing risk.”⁴² As a result, companies that fail to disclose will face “a higher cost of capital,” whereas those that do disclose “will attract investment more effectively, including higher-quality, more patient capital.”⁴³ Access to capital is particularly important for utilities given the capital intensity of their operations and the need for ongoing investment to maintain system reliability.

note 5, at iv (describing disclosure as “an essential building block to ensure that climate risks are measured” and indicating that “[i]nvestors can use climate-related disclosures to assess risks to firms, margins, cash flows, and valuations, allowing markets to price risk more accurately and facilitating the risk-informed allocation of capital”).

³⁷ Global Investor Statement to Governments on Climate Change (2019), <https://perma.cc/3HVQ-NH5X>.

³⁸ N.Y. Pub. Serv. Comm’n, *supra* note 31, at 71-72.

³⁹ CONSOLIDATED EDISON, *supra* note 33.

⁴⁰ Some New York-based utilities have previously indicated that they are unable to predict transition risks with certainty. *See, e.g.*, Consolidated Edison, Inc., Annual Report (Form 10-K) 37 (2019), <https://perma.cc/28CC-SQST>. However, with the 2019 enactment of the Climate Leadership and Community Protection Act, utilities now have much greater certainty regarding the policy framework in which they will be required to operate, making the assessment and disclosure of transition risks easier.

⁴¹ The Commission has previously recommended that utilities “integrate climate considerations into their system planning and construction forecasts and budgets.” *See* N.Y. Pub. Serv. Comm’n, *supra* note 31, at 72.

⁴² Fink, *supra* note 9.

⁴³ *Id.*; *see also* CFTC REPORT, *supra* note 5, at 87 (concluding that “[i]n the absence of robust disclosure, market participants may presume that a company is unprepared for climate-related risks, especially at a time of heightened volatility, such as during an extreme climate-attributed event. Ultimately, a lack of disclosure could also affect market confidence in management, valuable multiples and the cost of capital”); EU TECHNICAL EXPERT GROUP ON SUSTAINABLE FINANCE, REPORT ON CLIMATE-RELATED DISCLOSURES 5 (2019), <https://perma.cc/JB36-T7U3> (noting that “[g]ood climate-related disclosure that reflects strong governance and strategy on issues related to climate change can contribute to securing a lower cost of capital and more diverse investor base”).

Utilities will, inevitably, seek to recover any increase in capital costs from ratepayers. However, where the increase is due to a utility's mismanagement of climate-related risks, ratepayers should not be forced to foot the bill. Requiring utilities to disclose climate-related risks would help to protect ratepayers against inappropriate cost increases, either by alleviating investors' concerns about potential mismanagement or by highlighting where it is occurring and thus enabling the Commission to take appropriate action in response, such as disallowing recovery of certain costs. A disclosure requirement would, therefore, help to ensure that utility rates remain just and reasonable.

As the foregoing discussion suggests, utility climate-related risk disclosures would provide valuable information to the Commission and other government agencies. The Commission could use the disclosed information to assess whether utilities are taking appropriate steps to evaluate and manage climate-related risks (as it previously recommended), and to identify where further guidance or regulation is needed.⁴⁴ The information would also be useful to the Commission in assessing whether utilities are fulfilling their mandate to provide safe and adequate service at just and reasonable rates. Indeed, without information about the climate-related risks each utility faces and how it is managing those risks, the Commission cannot determine whether the utility is making prudent investment and other decisions in the interests of customers.⁴⁵ Importantly, this point relates to both physical and transition risk. Disclosures might, for example, reveal situations in which a utility is exacerbating its vulnerability to physical risks of climate change by investing in new infrastructure in inappropriate locations (e.g., exposed to sea level rise) or using inappropriate design parameters (e.g., a design reference temperature that is too low). Disclosures would also show how utilities are interpreting climate-related policy requirements and how well their plans and investments are preparing them to comply with mandatory emissions reductions or other requirements. For example, disclosures might show that utilities' valuation of certain commodities (e.g., natural gas), services (e.g., gas or steam), and supporting infrastructure (e.g., gas distribution lines and other system components) are incompatible with the clear implications of the CLCPA's basic mandate and of the regulatory programs that implement it.

The benefits of climate-related risk disclosure should more than outweigh any associated costs.⁴⁶ Assessing and disclosing climate-related risks would require an investment of time and effort by utilities, but they can make use of existing publicly-available data sets and other resources, which will mitigate costs.⁴⁷ Moreover, given the long-lived nature of many utility assets and their long planning and investment horizons, proactive risk assessment and disclosure may generate lifetime cost *savings*, including by enabling utilities to wholly avoid some risks and to more

⁴⁴ See generally CFTC REPORT, *supra* note 5, at 87 (noting that government bodies could use climate-related risk disclosures to evaluate the need for new climate-related regulations or guidance).

⁴⁵ See generally ROMANY WEBB ET AL., CLIMATE RISK IN THE ELECTRICITY SECTOR: LEGAL OBLIGATIONS TO ADVANCE CLIMATE RESILIENCE PLANNING BY ELECTRIC UTILITIES (forthcoming Dec. 2020) (arguing that the prudent investment standard requires utilities to plan for the impacts of climate change).

⁴⁶ For the benefits described above to be fully realized, utility disclosures must meet certain requirements, including being comparable, granular, and actionable. This is discussed further in our response to question 4 *infra*.

⁴⁷ Utilities can make use of location-specific, downscaled climate projections and other information published by the New York City Panel on Climate Change, New York State Energy Research and Development Authority, and others. See *supra* notes 23-27 and accompanying text. Electric utilities can also learn from, and make direct use of, the climate risk assessment conducted by Con Ed in 2019.

effectively manage others. Utilities would, for example, be better placed to “build-in” climate resilience when developing new infrastructure, avoiding future circumstances that require costly displacement or retrofitting of assets.⁴⁸ Mandating climate-related risk disclosures is, therefore, fully consistent with the Commission’s mandate to ensure that utilities provide reliable services at just and reasonable rates.

Question 2) Should utility operating companies in New York be required to make climate risk disclosure in annual financial statements, sustainability reports, or other public filings?⁴⁹

We strongly support the Commission’s proposal to require climate-related risk disclosures by utility operating companies. The Commission’s Order notes that utility operations are highly capital intensive. Growing concern within the financial community about the risks posed by climate change will make it increasingly difficult for utilities to attract the large amounts of capital they need on reasonable terms unless they can demonstrate awareness and effective management of climate-related risks.

Climate-related risk disclosures made by the parent holding companies of utilities cannot substitute for disclosures at the utility operating company level. In this regard, we note that disclosures by parent holding companies, even those that are signatories to the TCFD framework, are often limited. For example:

- National Grid PLC’s 2019/20 Annual Report noted that climate change will result in “some escalation of extreme weather events” which pose “physical risks” to its assets and operations.⁵⁰ It did not, however, include any detailed analysis of the projected change in extreme weather events or the associated physical risks. Nor did it analyze or even mention non-event based climate impacts and associated physical risks. The discussion of transition risks was similarly limited, with no mention of relevant laws or policies adopted in New York.
- Iberdrola S.A.’s 2020 Integrated Annual Report included just two sentences on “climate change risk.”⁵¹ The first sentence described climate change risk as including “the risk of transition . . . and physical risks,” but did not detail the nature of those risks or their implications for the company’s operations.⁵² The second sentence concluded, without any analysis or explanation, that the company “believes . . . it is well positioned with respect

⁴⁸ CRYSTAL RAYMOND, SEATTLE CITY LIGHT CLIMATE CHANGE VULNERABILITY ASSESSMENT AND ADAPTATION PLAN 1 (2015), <https://perma.cc/LYQ6-ZT3L> (concluding that “[d]ecisions are being made today that will shape the resources and infrastructure of the utility for decades into the future when the impacts of climate change will intensify It will be easier and more cost-effective to consider the impacts of climate change in the planning and design of new infrastructure and power resources now than it will be to retrofit infrastructure or replace resources once the impacts of climate change intensify”).

⁴⁹ We read this question to mean requiring disclosures by utility operating companies as distinct from utility holding companies.

⁵⁰ National Grid PLC, Annual Report and Accounts 2019/20 59 (2020), <https://perma.cc/6LG5-BMEU>.

⁵¹ Iberdrola S.A., Integrated Report: February 2020, at 84 (2020), <https://perma.cc/DU69-2MM4>.

⁵² *Id.*

to [climate change] risk, given the nature of its current businesses and its main goals for growth.”⁵³

- Consolidated Edison, Inc.’s 2019 Form 10-K discussed various physical risks posed by climate change, based on the analysis performed by its subsidiary, Con Ed.⁵⁴ The discussion of transition risks was much more limited, however. Notably, the company acknowledged that both New York State and New York City enacted new legislation dealing with climate change in 2019, but concluded that it was “unable to predict the impact on [it] of the implementation of th[e new] laws,” and merely stated that “[t]he cost to comply . . . could be substantial.”⁵⁵

Relying on disclosures by holding companies, many of which are national or multi-national organizations, also risks obscuring the specific climate-related risks facing each utility operating company. As the Commission has itself previously recognized, the impacts of climate change will vary across New York State, resulting in different utilities facing different physical risks.⁵⁶ For example, only coastal and estuarine utilities face physical risks from sea level rise, but even those utilities’ risk profiles differ as the extent of sea level rise is projected to vary along the state’s coastline.⁵⁷ Similarly, utilities also face different transition risks due to local differences in climate policy and its impact on utility operational and investment decisions. For example, New York City has adopted several climate policies that do not apply in other areas of the state,⁵⁸ including one requiring city agencies to oppose “the addition of infrastructure . . . that expands the supply of fossil fuels.”⁵⁹ That has direct implications for utility operations in New York City, but limited impact on utilities operating elsewhere in the state. Given these differences, climate-related risk disclosures at the utility operating company level are likely to yield more specific information than holding company disclosures. Operating company level disclosures might also expose risks arising from affiliate transactions, such as where a utility has contracted with an affiliate for natural gas pipeline capacity in an amount or for a period that is inconsistent with New York State’s energy transition. In addition, gathering and analyzing the information necessary to comply with disclosure requirements at the operating company level

⁵³ *Id.*

⁵⁴ Consolidated Edison, Inc., *supra* note 40, at 35–36.

⁵⁵ *Id.* at 37–38. The above examples focus on climate-related risk disclosures in the companies’ annual financial reports because, as discussed further below, the TCFD framework (which the companies have signed onto) recommends that disclosures be made in those reports. We note that each company also publishes an annual sustainability report or similar document that discusses climate-related issues. Generally, however, those reports do not include a comprehensive discussion of climate-related physical and transition risks. For example, the most recent sustainability reports published by National Grid PLC, Iberdola S.A., and Consolidated Edison, Inc. did not even mention the CLCPA, much less discuss its implications for company operations.

⁵⁶ N.Y. Pub. Serv. Comm’n, *supra* note 31, at 71–72 (noting that local climate impacts “will differ: [Con Ed and] other coastal and estuarine utilities . . . face sea level rise and storm surge, while all the State’s utilities face challenges such as Hurricane[s] . . . , Nor’easters, floods, severe winds, increasing ambient heat, and extreme heat events”).

⁵⁷ See N.Y. Comp. Codes R. & Regs. tit. 6, § 490.4 (outlining different sea-level rise projections for the Mid-Hudson Region, New York City/Lower Hudson Region, and Long Island Region).

⁵⁸ See, e.g., Climate Mobilization Act (package includes LLs 94, 95, 96, 97, all directly or indirectly relevant to local utilities).

⁵⁹ City of New York Office of the Mayor, Exec. Order No. 52 (Feb. 6, 2020), <https://perma.cc/K5DD-P2SR>.

should lead utilities and the Commission to better anticipate choke points that have resulted in moratoriums on new gas hookups in the past, and to avoid such disruptive solutions in the future.

Climate-related risk disclosures by utility operating companies should cover both physical and transition risks and be incorporated in annual financial statements as opposed to sustainability reports or other documents. This is consistent with the recommendations of the TCFD, which concluded that disclosure of physical and transition risks in annual financial statements—as opposed to ad hoc sustainability reports or other similar documents—ensures companies meet existing legal requirements to disclose material information in their financial filings.⁶⁰ According to the TCFD, integration of climate-related risk disclosure into financial reports also helps to ensure that disclosures are subject to robust governance processes, including audit requirements, and promote greater awareness and use of disclosures among investors and other stakeholders as financial statements are easily accessible and widely read.⁶¹ Citing similar reasons, other U.S. and international bodies have also advocated for the inclusion of climate-related risk disclosures in financial statements, rather than other documents.⁶²

Question 3) Should utility operating companies in New York be required to use the same approach to climate risk disclosure?

As discussed above, climate-related risk disclosures must be comparable, granular, and actionable to provide benefit. Comparison between disclosures is critical to ensuring that information provided to investors, shareholders, regulators, and other stakeholders is useful. All major New York utilities should therefore be required to use the same approach to climate-related risk disclosure. The TCFD endorses this sort of comparability—one of its seven principles for effective disclosure states that “disclosure should be comparable among companies within a sector, industry, or portfolio.”⁶³ That is, “disclosure should allow for meaningful comparisons of strategy, business activities, risks, and performance across organizations and within sectors and jurisdictions.”⁶⁴ Consistency and standardization thus drive comparability, and this comparability can be best achieved through an approach that is uniform for all utilities.

Notably, concerns or objections sometimes raised to standardizing climate-related risk disclosure requirements do not apply here. For example, commentators in other instances have suggested

⁶⁰ TCFD REPORT, *supra* note 2, at 17.

⁶¹ *Id.* at 18.

⁶² *See e.g.*, CFTC REPORT, *supra* note 5, at 87 (concluding that “[w]hen climate-related issues materially impact a firm’s underlying operations and capital investments, the firm’s financial statements should address them. When these issues pose material risk to firms, other sections of financial filings . . . should address them”); NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, CLIMATE-RELATED FINANCIAL DISCLOSURES: UNDERSTANDING YOUR BUSINESS RISKS AND OPPORTUNITIES RELATED TO CLIMATE CHANGE 40 (2019), <https://perma.cc/SWY5-LWYZ> (proposing that companies be required to include climate-related risk disclosures in their annual financial reports “because the information has important linkages to the financial statements and to the general commentary in annual reports about governance, strategy, and risk management”); AUSTRALIAN ACCOUNTING STANDARDS BOARD AND AUSTRALIAN AUDITING AND ASSURANCE STANDARDS BOARD, CLIMATE-RELATED AND OTHER EMERGING RISKS DISCLOSURES 3 (2019), <https://perma.cc/JTR3-498U> (indicating that “entities can no longer treat climate-related risks as merely a matter of corporate social responsibility and may need to consider them also in the context of their financial statements”).

⁶³ TCFD REPORT, *supra* note 2, at 18.

⁶⁴ *Id.* at 53.

that constructing a workable and useful mandatory template for a range of industries may be challenging.⁶⁵ Likewise, a single template or approach may be more difficult to craft or less useful where covered entities are geographically diverse or subject to a variety of laws and regulations,⁶⁶ or where covered entities vary significantly in size and resources.⁶⁷

Such concerns are not valid here. This proceeding involves a small number of companies in a single industry, that are geographically contained, and covered by the same state laws and regulations.⁶⁸ Standardization in this context is particularly achievable and worthwhile; commentators generally agree that standardization is most achievable when the approach applies to only one sector or industry, making this proceeding apt.⁶⁹ Furthermore, this proceeding applies only to the state's "major" utilities, mitigating concerns of disproportionate burdens for smaller utilities.⁷⁰ Standardization is also appropriate here for other, state-specific reasons discussed above. New York utilities benefit from increasingly clear and coherent climate and energy policy and have access to a large repository of information about changes to the regional climate that can inform both transition and physical risk identification and analysis.

In addition to making disclosures comparable, the Commission should also ensure that they are specific and actionable. This means balancing the twin aims of standardization and specificity. Standardization of process, not outcome, should be the goal. Boiler-plate language should be recognized as unhelpful to all stakeholders, including utilities themselves. As discussed in more detail below, various voluntary and international frameworks provide approaches that strike this balance, yielding disclosures that are useful for all stakeholders.

For these reasons, we respectfully ask that the Commission mandate a uniform approach to disclosure.

⁶⁵ See, e.g., Cydney Posner, *Climate Change Tops the List of Issues in Comments on Reg S-K Concept Release*, COOLEY PUBCO (Sept. 30, 2016), <https://perma.cc/KK6F-PKG5> (discussing remarks of SEC Division of Corporation Finance Director Keith Higgins) ("According to Higgins, '[c]limate change tops the list of issues' However, he acknowledged, the issues involved in sustainability 'cut across 79 different industries and aren't suited to a constant set of rules Everyone recognizes that one-size-fits-all disclosure is likely not to be so effective in the sustainability area—others recognize the enormity of that task.'").

⁶⁶ See, e.g., Statement of Chairman Jay Clayton on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), <https://perma.cc/5A59-2SNQ>.

⁶⁷ See, e.g., Summary Report of the Public Consultation on the Review of the Non-Financial Reporting Directive, Ref Ares (2020), at 3, 23-24 (July 29, 2020), <https://perma.cc/JB3M-L8DA> [hereinafter NFRD Consultation] ("74% of respondents support the development of simplified standards for [Small to Medium Enterprises].").

⁶⁸ Some utilities may be subject to additional local laws, like in New York City, see *supra* 58 and 59 and accompanying text, but all of the major utilities operate under the same broad state framework.

⁶⁹ See SASB, CONCEPTUAL FRAMEWORK 5, 7 (2017), <https://perma.cc/JK4H-2D7D> (explaining its focus on industry-specific standards to allow useful comparison); TCFD REPORT, *supra* note 2, at 18 (calling for comparable disclosure among sectors or industries); see also NFRD Consultation, *supra* note 67, at 18-19 ("80% of all respondents favour the inclusion of sector-specific elements in a reporting standard.").

⁷⁰ We read this question to ask only whether all major utility operating companies in New York should be required to use the same approach to disclosure, but leave open the eventual possibility that all utility operating companies, major or otherwise, should be required to use a standardized disclosure approach.

Question 4) Which framework for such climate risk disclosure should utility operating companies in New York be required to adopt, whether TCFD’s recommended disclosures or other, and why? If so, how should utility operating companies implement those recommended disclosures?

We believe the following elements should serve as the foundation for any disclosure regime. First, the regime should be informed by principles of comparability, granularity, and actionability.⁷¹ Second, the regime should provide for decision-useful information on both transition and physical risks.

The Commission can and should draw on multiple existing well-documented, researched, and reviewed frameworks and standards in crafting a disclosure regime.⁷² However, while existing frameworks and standards serve as a useful foundation, each has shortcomings, some of which are discussed below. None of these voluntary regimes, therefore, should be adopted uncritically or without considering how well their application would satisfy the principles listed above.

As the Order identifies, the TCFD framework has broad support from the investment community. The 2020 Status Report found that 1,500 organizations globally have expressed support for it.⁷³ Major investors like BlackRock have called upon investee companies to use it when making disclosures.⁷⁴ New Zealand and the United Kingdom have announced they will require disclosure in line with its prescriptions.⁷⁵ In the European Union, a recent public consultation on amending the Non-Financial Reporting Directive found that 71% of respondents agreed that any changes should incorporate the TCFD framework.⁷⁶ The major voluntary

⁷¹ See, e.g., TCFD REPORT, *supra* note 2, at 53 (“Disclosures should be *comparable* among organizations within a sector, industry, portfolio.” (emphasis added)); *id.* at 52 (“The disclosures should be sufficiently *granular* to inform sophisticated users” (emphasis added)); CERES ET AL., SETTING THE BAR: IMPLEMENTING THE TCFD RECOMMENDATIONS FOR OIL AND GAS METHANE DISCLOSURES 4 (2018), <https://perma.cc/ANM4-7Q5D> (incorporating climate risk into investment decisions “requires consistent, accurate and *actionable* climate disclosures” (emphasis added)); see also Sustainability Accounting Standards Bd., Response of the Sustainability Accounting Standards Board to the Public Consultation on the Revision of the Non-Financial Reporting Directive 3 (2020), <https://perma.cc/P96N-B9RF> (“While the principles embedded in various non-financial reporting frameworks can ensure relevance and set the table for comparability, only standards with relatively specific disclosure requirements and metrics can facilitate reporting that is comparable and reliable at the level of granularity which capital markets require and which all users need to establish accountability. In short, standards make frameworks actionable, ensuring comparable, consistent, and reliable disclosure.”).

⁷² As stated in the CFTC Climate Related Market Risk Advisory Subcommittee’s report on climate-related financial risk, “because [existing] standards are already sophisticated, regulators do not need to create their own standards or metrics from scratch.” CFTC REPORT, *supra* note 5, at 100.

⁷³ TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, 2020 STATUS REPORT at 2 (2020), <https://perma.cc/55QE-4RFL> [hereinafter TCFD 2020 STATUS REPORT].

⁷⁴ Fink, *supra* note 9.

⁷⁵ Mark Segal, *UK Becomes First Country in the World to Make TCFD-aligned Disclosures Mandatory*, ESG TODAY (Nov. 9, 2020), <https://perma.cc/2DU9-HT78>; *Mandatory Climate-Related Financial Disclosure Proposed*, RADIO NEW ZEALAND (Sept. 15, 2020) <https://perma.cc/W8Y8-G4WL>; TCFD 2020 STATUS REPORT, *supra* note 73, at 3; CFTC REPORT, *supra* note 5, at 96 (also noting Canadian officials have recommended the adoption of the TCFD).

⁷⁶ NFRD Consultation, *supra* note 67, at 21 (588 responses were submitted by stakeholders across Europe and elsewhere, representing users and preparers, financial and non-financial corporations, academia and non-governmental organizations).

standard setters have also united behind the TCFD framework by detailing how their standards align with and/or can be used in conjunction with it.⁷⁷

The TCFD framework is thus an important foundation upon which the Commission can and should build—but the Commission should not stop there, particularly as the TCFD framework “did not develop any detailed industry-specific standards or metrics for disclosing [climate-related] risks.”⁷⁸ While the TCFD Framework does provide specific example metrics for the energy group, which includes electric utilities,⁷⁹ it is best-suited for use in conjunction with more specific standards, such as those from the Sustainability Accounting Standards Board (SASB) and the Climate Disclosure Standards Board (CDSB). SASB’s standards for electric and gas utilities include climate-related risk disclosures and metrics;⁸⁰ its electric utility standards recommend disclosures and metrics related to greenhouse gas emissions and management, energy resource planning, and grid resiliency.⁸¹ Likewise, the CDSB has provided useful guidance for climate-related disclosures, including information that can be reported under the TCFD framework.⁸² As both are compatible with the TCFD framework, the Commission should review them and consider how best to integrate them into its requirements.

In adopting such standards or metrics, the Commission should consider tailoring them to its specific sector, jurisdiction, and geographic region. For example, it may want to mandate that transition risk disclosures discuss compliance with the CLCPA and other major climate and energy policies in New York. Likewise, while SASB provides a strong set of metrics for transition risks, its disclosures and metrics on physical risk are more limited and may need to be supplemented.

The Commission’s approach to disclosure should also go beyond the EEI/AGA rubrics, which envision voluntary reporting of a scope to be determined by the reporting entity.⁸³ Climate-related risk disclosures must be decision-useful, and disclosure must go beyond a voluntary, high level, boiler-plate summary. As such, if the Commission decides to integrate elements of the

⁷⁷ See, e.g., CLIMATE DISCLOSURE STANDARDS BD. & SUSTAINABILITY ACCOUNTING STANDARDS BD., TCFD IMPLEMENTATION GUIDE 4 (2019), <https://perma.cc/X72M-EDZH>; CLIMATE DISCLOSURE STANDARDS BD. & SUSTAINABILITY ACCOUNTING STANDARDS BD., TCFD GOOD PRACTICE HANDBOOK 5 (2019), <https://perma.cc/2K2M-VRHD>; CDP, CLIMATE DISCLOSURE STANDARDS BD., GRI, INTEGRATED REPORTING & SUSTAINABILITY ACCOUNTING STANDARDS BD., STATEMENT OF INTENT TO WORK TOGETHER TOWARDS COMPREHENSIVE CORPORATE REPORTING APP. (2020), <https://perma.cc/L9Y2-8U3S>.

⁷⁸ CLIMATE RISK DISCLOSURE LAB, CLIMATE RISK DISCLOSURES & PRACTICES: HIGHLIGHTING THE NEED FOR A STANDARDIZED REGULATORY DISCLOSURE FRAMEWORK TO WEATHER IMPACTS OF CLIMATE CHANGE ON FINANCIAL MARKETS 40 (2020), <https://perma.cc/H44E-C7TG>.

⁷⁹ TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES 52–55 (2017), <https://perma.cc/R5WF-4MKT>.

⁸⁰ SUSTAINABILITY ACCOUNTING STANDARDS BD., ELECTRIC UTILITIES & POWER GENERATORS: SUSTAINABILITY ACCOUNTING STANDARDS (2018); SUSTAINABILITY ACCOUNTING STANDARDS BD., GAS UTILITIES & DISTRIBUTORS: SUSTAINABILITY ACCOUNTING STANDARDS (2018) (these standards are not clearly related to climate-risk, but could be integrated into climate-related standards), both available at <https://perma.cc/U2BQ-QYC4>.

⁸¹ SUSTAINABILITY ACCOUNTING STANDARDS BD., ELECTRIC UTILITIES & POWER GENERATORS: SUSTAINABILITY ACCOUNTING STANDARDS 10-16, 43-45 (2018).

⁸² CLIMATE DISCLOSURE STANDARDS BD., FRAMEWORK FOR REPORTING ENVIRONMENTAL & CLIMATE CHANGE INFORMATION (2019), <https://perma.cc/F3P7-27HQ>.

⁸³ Edison Elec. Inst. & Am. Gas Ass’n, ESG/Sustainability Template – Version 2 (2019), <https://perma.cc/5LNQ-QJ2V>.

EEI/AGA disclosure rubric, it should do so in a way that is consistent with the principles identified above regarding comparability, granularity, and actionability, and with a scope that encompasses physical and transition risks.

The Commission should also consider ongoing efforts by international regulators. The European Union's work on the Sustainable Finance Disclosure Regulation is one example of how to construct specific and comparable disclosures. Specifically, the EU Supervisory Authorities (the bloc's financial regulators) have provided draft regulatory technical standards for sustainability disclosures by financial companies.⁸⁴ The draft lays out the order and sections of a mandatory adverse sustainability impact statement and identifies information that must be included in each section.⁸⁵ The draft regulation demands specifics from covered entities. For instance, in requiring that companies disclose relevant policies, it mandates not only a description of the policies, but also dates of approval, allocation of responsibility for implementation, methodologies for impact identification, an explanation of any margin of error, and a description of the data used.⁸⁶ The draft regulation carefully considers the need for consistent and comparable disclosure, while also requiring specific company-level information that is decision-useful for stakeholders.

Finally, regardless of the disclosure approach adopted, the Commission must provide guidance to utilities and actively enforce compliance.⁸⁷ It should robustly identify risks that utilities face and define metrics to be used. The SEC's 2010 Guidance, and the European Union's Guidelines on Reporting Climate-Related Information are both useful examples of guidance.⁸⁸

⁸⁴ EUROPEAN SUPERVISORY AUTHORITIES, JOINT CONSULTATION PAPER: ESG DISCLOSURE 19 (2020), <https://perma.cc/LWX4-MLA2>.

⁸⁵ *Id.* Art. 4-13.

⁸⁶ *Id.* Art. 7.

⁸⁷ The 2010 SEC Climate Disclosure Guidance is often criticized because of the SEC's failure (or inability) to enforce compliance. *See, e.g.*, CERES, SEC CLIMATE GUIDANCE & S&P 500 REPORTING – 2010 TO 2013 at 20–27 (2014), <https://perma.cc/UZD9-Q69Z>.

⁸⁸ Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010); Guidelines on Non-Financial Reporting: Supplement to Reporting Climate-Related Information, COM (2019) 4490 final (June 6, 2019), <https://perma.cc/8XRZ-QN9L>.