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Office of FOIA Services
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Washington, DC 20549-2736
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2736

Office of FOIA Services

August 29, 2013

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 13-10124-FOIA

This letter responds to your request, dated and received in this office on August 08, 2013, seeking copies of the documents and any other response provided to the Bicameral Task Force on Climate Change in response to their February 13, 2013 letter to the Office of the Inspector General.

After consulting with other staff, access is granted to the attached correspondence with the exception of the names and phone number of Commission employees, under 5 U.S.C. § 552(b)(6), 17 CFR § 200.80(b)(6), which protects records or information when disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to our General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5) and (6). Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the records at issue. The appeal may include facts and authorities you consider appropriate.

Send your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2736, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of the General Counsel, Mail Stop 9612, or deliver it to Room 1120 at the Station Place address.

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If you have any questions, please contact Tina Churchman of my staff at churchmant@sec.gov or (202) 551-8330. You may also contact me at foiapa@sec.gov or (202) 551-7900.

Sincerely,



Dave Henshall
FOIA Branch Chief

Enclosure



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 29, 2013

By Hand Delivery

The Honorable Henry A. Waxman
Co-Chair, Bicameral Task Force on Climate Change
Ranking Member, Committee on Energy and Commerce
United States House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sheldon Whitehouse
Co-Chair, Bicameral Task Force on Climate Change
Chairman, Subcommittee on Oversight, Committee on Environment and Public Works
United States Senate
530 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Edward J. Markey
Co-Chair, Bicameral Task Force on Climate Change
Ranking Member, Committee on Natural Resources
United States House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Benjamin L. Cardin
Co-Chair, Bicameral Task Force on Climate Change
Chairman, Subcommittee on Water and Wildlife, Committee on Environment and Public Works
United States Senate
509 Hart Senate Office Building
Washington, D.C. 20510

RE: Response to Bicameral Task Force on Climate Change

Dear Representative Waxman, Senator Whitehouse, Representative Markey and Senator Cardin:

This letter responds to your February 25, 2013 request for information relating to the U.S. Securities and Exchange Commission's (SEC or Commission) climate change initiatives. Please understand that our office does not have an independent body of work from which to draw our response. Accordingly, this response encompasses the information as provided to our office by both the Office of the General Counsel (OGC) and the Office of the Chief Operating Officer (OCCO).

In response to the first part of your request, our office has taken several steps to (1) identify the existing requirements in legislation, regulation, executive order, and other directives that apply to the SEC's energy efficiency and carbon emissions; (2) assess whether the SEC is meeting these requirements; and (3) if the SEC is not fully meeting these requirements, to make recommendations for improving its performance.

The SEC currently employs approximately 4,000 individuals. The Commission's headquarters is located in Washington, D.C. and its eleven regional offices are located in Atlanta, Boston, Chicago, Denver, Fort Worth, Los Angeles, Miami, New York, Philadelphia, Salt Lake City, and San Francisco. The Commission has recently delegated its leasing authority to the U.S. General Services Administration (GSA); therefore, GSA will be responsible for ensuring that much of the reporting requirements that this inquiry pertains to are met. Currently, all facilities used by the SEC are leased facilities.

According to our office's preliminary research and the SEC OGC's response, our office has determined that several provisions of both the Energy Independence and Security Act (EISA) of 2007, Pub. L. 110-140 and Executive Order (E.O.) 13514, signed by President Obama in 2009, are currently inapplicable to the SEC. EISA Title I: Energy Security Through Improved Vehicle Fuel Economy, Subtitle C, Federal Vehicle Fleets, prohibits federal agencies like the SEC from acquiring any light-duty motor vehicles or medium-duty passenger vehicles that is not "a low greenhouse gas emitting vehicle" as defined in this subtitle. The SEC has vested its leasing power with the GSA and thus this agency presumes that the GSA has complied with these requirements. Alternatively, under Title I, the agency may demonstrate that it has adopted cost-effective policies to reduce its petroleum consumption sufficiently to achieve a comparable reduction in greenhouse gas emissions. By 2015, federal agencies are required to achieve at least a 20% reduction in annual petroleum consumption and a 10% increase in annual alternative fuel consumption. However, EISA's provisions regarding vehicle emission requirements for federal vehicle fleets only apply to agencies with fleets consisting of twenty or more vehicles.¹ The SEC has not met the twenty vehicle threshold; thus, E.O. 13514's requirement to reduce vehicle fleet petroleum use also would not apply to the SEC because guidance from the Department of Energy's Federal Energy Management Program (FEMP) and that GSA states only agencies that own or lease more than 20 vehicles are subject to this provision.² The guidance issued by FEMP and GSA also indicates that the requirements in Executive Order 13423, requiring federal agencies to achieve various environmental efficiency and conservation goals and codified into law by the 2009 Omnibus Appropriations Act, does not apply to agencies that own or lease fewer than twenty vehicles.³

EISA Title III: Energy Savings Through Improved Standards for Appliance and Lighting requires advanced improvement in appliance efficiency and lighting efficiency. Upon receiving your request, the OIG forwarded this inquiry to the SEC OCOO. The OCOO cited the SEC's 2010 Sustainability Report and informed our office that to the best of the OCOO's knowledge,

¹ See 42 U.S.C. § 13212(b)(3).

² See "Guidance for Federal Agencies on E.O. 13514 Section 12, Federal Fleet Management" (available at <http://www.gsa.gov/graphics/fas/ExecutiveOrder13514.pdf>).

³ *Id.*

the SEC is in compliance with this requirement. However, this report has not been updated annually as required, due to resource constraints according to the OCOO.

EISA Title IV: Energy Savings in Buildings and Industry, Subtitle C, High Performance Federal Buildings, Section 431 requires that total energy use in federal buildings, relative to the 2005 level, be reduced 30% by 2015. Section 432 directs that federal energy managers conduct a comprehensive energy and water evaluation for each facility at least once every four years. For new federal buildings and major renovations, Section 433 requires that fossil-fuel energy use — relative to the 2003 level — be reduced 55% by 2010 and be eliminated (100% reduction) by 2030. Section 434 requires that each federal agency ensure that major replacements of installed equipment (such as heating and cooling systems), or renovation or expansion of existing space, employ the most energy efficient designs, systems, equipment, and controls that are life-cycle cost effective. Section 435 prohibits federal agencies from leasing buildings that have not earned an EPA Energy Star label.

The SEC is partially exempt in practice from the mandatory reporting requirements in E.O. 13514 related to the establishment of greenhouse gas (GHG) emission reduction targets. Under E.O. 13514, agencies are required to inventory and report their GHG emissions to the White House Council on Environmental Quality and Office of Management and Budget. However, because the SEC leases all the facilities comprising its headquarters and regional offices, on a fully serviced lease basis, these reporting requirements are voluntary for the SEC and our office could not find a record of the SEC submitting this report to the White House Counsel on Environmental Quality.⁴ The Commission is responsible for paying for the electricity at both the New York and Chicago Regional Offices and is responsible for paying all the utilities at the Commission's headquarters. Upon receiving this inquiry, our office requested information regarding compliance with these requirements from the OCOO. Again, the OCOO cited its 2010 Sustainability Report and represents that to the best of OCOO's knowledge, the SEC is complying with 42 U.S.C. § 8253, Energy Management Requirements. However, due to current resource constraints, the OCOO office is unable to submit a report on this information. The OCOO informed our office that in some instances landlords—particularly when the SEC leases only a portion of a building—have not been willing to separately monitor the energy use of the SEC due to economic infeasibility. Enclosed with this letter is a listing of the LEED certifications of each SEC office space. Please note the Philadelphia Regional Office currently receives a historical building exception and the Los Angeles, Philadelphia, and Salt Lake City Regional Offices will be moving to GSA leased facilities within the year.

The OCOO informed our office of the SEC's newly hired a Sustainability Officer, whom, with the SEC's Director of Office of Support Operations, will continue to ensure that the SEC is complying with the requirements set forth in this letter. Additionally, the OCOO is spearheading a green initiative campaign, led by the SEC's Chief Operating Officer. The environmental campaign encourages recycling and other environmentally conscious behavior. Other steps

⁴ See Federal Greenhouse Gas Accounting and Reporting Guidance (available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/revised_federal_greenhouse_gas_accounting_and_reporting_guidance_060412.pdf).

taken by the Commission to reduce its carbon footprint include transitioning to “Cloud Technology” and purchasing sustainable furniture pursuant with the green initiative campaign.

In response to the second part of your request, our office has taken steps to assess (1) the authorities the SEC has to reduce the emissions of heat-trapping pollution; (2) the SEC’s authorities to make the nation more resilient to the effects of climate change; and (3) the most effective additional steps it could take to reduce emissions or strengthen resiliency. The SEC does not possess authorities to reduce emissions of heat-trapping pollution. Nor does the agency have authorities to make the nation more resilient to the effect of climate change. In determining the most effective steps the Commission could take to reduce emissions or strengthen resiliency, it is important to note from the outset that the SEC is a financial regulatory agency. The mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Unlike the banking world, where deposits up to a certain amount are guaranteed by the federal government, stocks, bonds and other securities can lose value. Therefore, the laws and rules that govern the securities industry in the United States are written to ensure that all investors, whether large institutions or private individuals, should have access to the proper assortment of facts about an investment prior to buying it, and for the duration that the investment is held. To achieve this goal, the SEC requires public companies to disclose meaningful financial as well as other material information to the public. Because of the SEC’s position, our response will focus on disclosure requirements for public companies regarding environmental issues.

Increasingly, there have been calls for climate-related disclosures by shareholders of public companies. As reflected in the several petitions for interpretive advice submitted by large institutional investors and other investor groups.⁵ As part of the SEC’s guidance regarding disclosure related to climate change, the Commission first addressed disclosure of material environmental issues in the early 1970s.⁶ As noted in the guidance, climate change is a topic of intense public discussion; scientists, government leaders, legislators, regulators, businesses, including insurance companies, investors, analysts and the public at large have expressed interest in climate change and its potential effects. Throughout the 1970s, the Commission continued to explore the need for specific rules mandating disclosure of information relating to litigation and other business costs arising out of compliance with federal, state and local laws that regulate the

⁵ See *Petition for Interpretive Guidance on Climate Risk Disclosures*, dated September 19, 2007, File No. 4547, available at <http://www.sec.gov/rules/petitions/2007/petn4-547.pdf>; supplemental petition dated June 12, 2008, available at <http://www.sec.gov/rules/petitions/2008/petn4-547-supp.pdf>; second supplemental petition dated November 23, 2009, available at <http://www.sec.gov/rules/petitions/2009/petn4-547-supp.pdf>. For other petitions on point, see also *Petition for Interpretive Guidance on Business Risk of Global Warming Regulation*, submitted on behalf of the Free Enterprise Action Fund on October 22, 2007, File Number 4-549, available at <http://www.sec.gov/rules/petitions/2007/petn4-549.pdf>. One petition urges the Commission to issue guidance warning companies not to include information on climate change that may be false and misleading; see *Petition for Interpretive Guidance on Public Statements Concerning Global Warming and Other Environmental Issues*, submitted on behalf of the Free Enterprise Action Fund on July 21, 2008, File No. 4-563, available at <http://www.sec.gov/rules/petitions/2008/petn4-563.pdf>. While not a formal petition, Ceres has provided the Commission with the results of a study it commissioned in conjunction with the Environmental Defense Fund regarding climate risk disclosure in SEC filings and suggests that the Commission issue guidance on this topic. See *Climate Risk Disclosure in SEC Filings: An Analysis of 10-K Reporting by Oil and Gas, Insurance, Coal, and Transportation and Electric Power Companies*, June 2009, available at <http://www.ceres.org/Document.Doc?id=473>.

⁶ See *Generally Release Nos. 33-9106; 34-61469; FR-82*.

discharge of materials into the environment or otherwise relate to the protection of the environment. These topics were the subject of several rulemaking efforts, extensive litigation, and public hearings, all of which resulted in the rules that now specifically address disclosure of environmental issues.⁷ The Commission adopted these rules, which we discuss below.⁸

When a registrant is required to file a disclosure document with the Commission, the requisite form will largely refer to the disclosure requirements of Regulation S-K⁹ and Regulation S-X.¹⁰ Securities Act Rule 408 and Exchange Act Rule 12b-20 require a registrant to disclose, in addition to the information expressly required by Commission regulation, "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."¹¹

Item 101 of Regulation S-K requires a registrant to describe its business and that of its subsidiaries. This Item lists a variety of topics that a registrant must address in its disclosure documents, including disclosure about its form of organization, principal products and services, major customers, and competitive conditions. The disclosure requirements cover the registrant and, in many cases, each reportable segment about which financial information is presented in the financial statements. If the information is material to individual segments of the business, a registrant must identify the affected segments. Item 101 expressly requires disclosure regarding certain costs of complying with environmental laws.¹² In particular, Item 101(c)(1)(xii) states:

Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem material.¹³

⁷ See Interpretive Release No. 33-6130 (September 27, 1979) [44 FR 56924] (the "1979 Release"), which includes a brief summary of the legal and administrative actions taken with regard to environmental disclosure during the 1970s. More information relating to the Commission's efforts in this area is chronicled in Release No. 33-6315 (May 4, 1981) [46 FR 25638].

⁸ Release No. 33-6383 (March 3, 1982) [47 FR 11380].

⁹ 17 CFR Part 229.

¹⁰ 17 CFR Part 210.

¹¹ 17 CFR 230.408 and 17 CFR 240.12b-20.

¹² The Commission first addressed disclosure of material costs and other effects on business resulting from compliance with existing environmental law in its first environmental disclosure interpretive release in 1971. See Release 33-5170 (July 19, 1971) [36 FR 13989]. The Commission codified that interpretive position in the disclosure forms two years later. See Release 33-5386 (April 20, 1973) [38 FR 12100]. The Commission provided additional interpretive guidance in the 1979 Release. With some adjustments to reflect experience with the subject matter, the requirements were moved to Item 101 in 1982, and they have not changed since that time. See Release No. 33-6383 (March 3, 1982) [47 FR 11380].

¹³ 17 CFR 229.101(c)(1)(xii).

Item 101(h)(4)(xi) requires disclosure of the "costs and effects of compliance with environmental laws (federal, state and local)."¹⁴ A registrant meeting the definition of "smaller reporting company" may satisfy its disclosure obligation by providing information called for by Item 101(h).

The Commission first addressed disclosure of material costs and other effects on business resulting from compliance with existing environmental law in its first environmental disclosure interpretive release in 1971.¹⁵ The Commission codified that interpretive position in the disclosure forms two years later.¹⁶ The Commission provided additional interpretive guidance in the 1979 Release. With some adjustments to reflect experience with the subject matter, the requirements were moved to Item 101 in 1982, and they have not changed since that time.¹⁷

Instruction 5 to Item 103 provides some specific requirements that apply to disclosure of certain environmental litigation. Instruction 5 states:

Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if: (A) such proceeding is material to the business or financial condition of the registrant; (B) Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or (C) A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Although some information relating to GHG emissions and climate change is disclosed in SEC filings,¹⁸ much more information is publicly available outside of public company disclosure

¹⁴ 17 CFR 229.101(h)(4)(xi).

¹⁵ See Release 33-5170 (July 19, 1971) [36 FR 13989].

¹⁶ See Release 33-5386 (April 20, 1973) [38 FR 12100].

¹⁷ See Release No. 33-6383 (March 3, 1982) [47 FR 11380].

¹⁸ For example, in the electric utility industry, we have been informed by the Edison Electric Institute that 95% of the member companies it recently surveyed reported that they included at least some disclosure related to greenhouse gas emissions in their SEC filings, with 34% discussing quantities of greenhouse gases emitted and 23% discussing costs of climate-related compliance. Registrants include this type of disclosure in the risk factors, business description, legal proceedings, executive compensation, MD&A and financial statements sections of their annual reports. The Edison Electric Institute is an association of U.S. shareholder-owned electric companies. Their members serve 95 percent of the customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. The EEI also has more than 80 international electric

documents filed with the SEC as a result of voluntary disclosure initiatives or other regulatory requirements. For example, in addition to the disclosure requirements mandated in several states¹⁹ and the disclosure that the EPA began requiring at the start of 2010, The Climate Registry provides standards for and access to climate-related information.

Should your staffs have any questions or require further information, please contact

(b)(6) of my staff at (b)(6)

Sincerely,

Carl W. Hoecker
Inspector General

companies as affiliate members, and nearly 200 industry suppliers and related organizations as associate members. The EEI described the results of its survey in a presentation to staff members of the Division of Corporation Finance. 17 CFR Parts 211, 231, 241.

¹⁹ State requirements include CO₂ emissions disclosure requirements for electricity providers, greenhouse gas registries for reporting of entity emissions levels and emissions changes, and required reporting of greenhouse gas emissions. For a discussion of specific state requirements, *see* http://epa.gov/climatechange/wycd/stateandlocalgov/state_reporting.html.