Energy and Environment Legal Institute

Via Email

August 13, 2019

Vanessa Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Petition for Action Regarding Misleading Climate Disclosures

Dear Madam Secretary,

We are respectfully submitting this petition to the U.S. Securities and Exchange Commission (the "Commission") requesting that it take appropriate action to prevent and prohibit registrants from making materially false and misleading claims and statements related to global climate change.

I. Background

The Commission issued guidance specific to climate in "Guidance Regarding Disclosure Related to Climate Change" in 2010 (the "2010 Guidance").[1]

Securities and Exchange Commission

17 CFR Parts 211, 231 and 241
Commission Guidance Regarding Disclosure Related to Climate Change; Final Rule

In addition to any climate change-related disclosures ordinarily required by other Commission rules, the 2010 Guidance suggested four other climate-related areas subject to disclosure: i.e., business risks from (1) legal/regulatory impacts; (2) international agreements; (3) business trends; and (4) weather/physical events.

This petition does not seek to alter that risk-oriented disclosure guidance.

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Rather, this petition requests that the Commission take action to prevent and prohibit registrants from making false and misleading climate-related claims about their own actions.

II. Today's Climate Change Reality

To understand the false and misleading nature of climate-related claims being made by registrants, it is necessary to review some basic facts about manmade greenhouse gas emissions. Whatever one's views are of the state and implications of climate science, the facts presented below are not in dispute.

Fact 1. **Manmade greenhouse gas emissions are presently about 53.5 BILLION tons (CO_2-equivalent) annually.**

The United Nations Environment Programme (UNEP) issued its "Emissions Gap Report 2018" last November.[2]

The UN report estimates includes that global manmade emissions of greenhouse gases are 53.5 BILLION tons of carbon dioxide-equivalent annually (*See underscored text, below*).

2. **Global greenhouse gas emissions show no signs of peaking. Global CO_2 emissions from energy and industry increased in 2017, following a three-year period of stabilization. Total annual greenhouse gases emissions, including from land-use change, reached a record high of 53.5 $GtCO_2e$ in 2017, an increase of 0.7 $GtCO_2e$ compared with 2016. In contrast, global GHG emissions in 2030 need to be approximately 25 percent and 55 percent lower than in 2017 to put the world on a least-cost pathway to limiting global warming to 2°C and 1.5°C respectively.**

The significance of this fact — asserted by the United Nations — is that, for the foreseeable future, 53.5 BILLION tons of CO2 is the minimum standard (since emissions show no sign of declining) by which we are to measure the significance of claims and promises of emissions cuts.

Fact 2. Manmade greenhouse gas emissions are growing.

From the same UN report and section, manmade greenhouse emissions are increasing with no end in sight (*See underscored text, below*).

2. **Global greenhouse gas emissions show no signs of peaking. Global CO_2 emissions from energy and industry increased in 2017, following a three-year period of stabilization. Total annual greenhouse gases emissions, including from land-use change, reached a record high of 53.5 $GtCO_2e$ in 2017, an increase of 0.7 $GtCO_2e$ compared with 2016. In contrast, global GHG emissions in 2030 need to be approximately 25 percent and 55 percent lower than in 2017 to put the world on a least-cost pathway to limiting global warming to 2°C and 1.5°C respectively.**

To further underscore the reality of the facts presented in the UN report consider the following.

Despite decades of climate alarmism, the world is burning more coal, oil and gas than ever before. Even while U.S. utilities plan to shut down a handful of coal plants here and there over the coming decades, the *New York Times* reported on July 1, 2017 that:[3]

> Over all, 1,600 coal plants are planned or under construction in 62 countries, according to Urgewald's tally, which uses data from the Global Coal Plant Tracker portal. The new plants would expand the world's coal-fired power capacity by 43 percent.

Pictured below, for example, is the Thar power plant in the Sindh province of Pakistan. The plant sits atop 175 billion tons of coal—one of the largest deposits in the world equal to about 20 years of global coal production. Pakistan plans for the site to produce 200,000 MW of electricity over the next *100 years*.

China has actually reversed its announced policy of limiting coal plant construction.

Bloomberg

Markets

China's Far From Done With Coal as Regulator Eases New Plant Ban

Bloomberg News
April 19, 2019, 5:05 AM EDT

- 11 provinces and regions allowed to build coal plants again
- New plants still barred in 10 regions seen having overcapacity

Transport trucks transfer raw coal in pits in Changji Hui Autonomous Prefecture, China. *Photographer: China News*

4

Even though China is by far the world's leading coal burner, its power sector has proposed DOUBLING its coal burning capacity by 2030, which would mean building a new coal plant every two weeks until 2030.[5]

China's power industry calls for hundreds of new coal power plants by 2030

Under the proposal, the country could add a large coal power plant every 2 weeks for the next 12 years

28.03.2019 by **Lauri Myllyvirta**

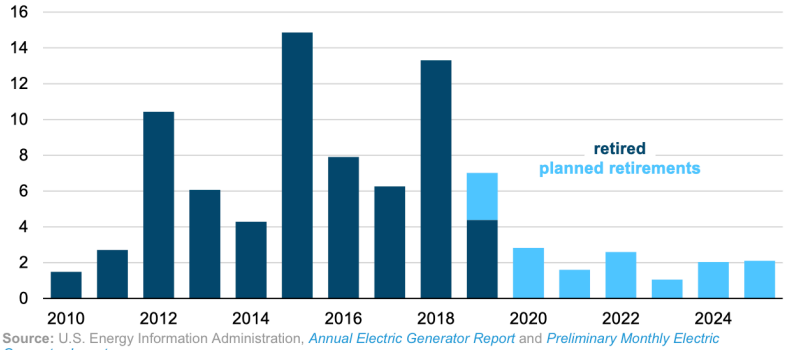
China's coal policy plays a key role in global climate efforts. Photo: Kevin Frayer, Getty Images

Consider this comparison between coal plant construction in China versus planned coal plant *closures* is the US. In July 2016, the U.S. Energy Information Administration reported that between 2019 and 2025 a total of 17 gigawatts (GW) of US coal plants are expected to be shuttered.[6]

JULY 26, 2019

More U.S. coal-fired power plants are decommissioning as retirements continue

Total net summer capacity of retired and retiring coal units (2010-2025)
gigawatts



Source: U.S. Energy Information Administration, *Annual Electric Generator Report* and *Preliminary Monthly Electric Generator Inventory*

Between 2010 and the first quarter of 2019, U.S. power companies announced the retirement of more than 546 coal-fired power units, totaling about 102 gigawatts (GW) of generating capacity. Plant owners intend to retire another 17 GW of coal-fired capacity by 2025, according to the U.S. Energy Information Administration's (EIA) *Preliminary Monthly Electric Generator Inventory*. After a coal unit retires, the power plant site goes through a complex, multi-year process that includes decommissioning, remediation, and redevelopment.

Days later, a study reported China is adding another 45 GW worth of coal plants in 2019 alone.[7]

SUSTAINABLE BUSINESS JULY 30, 2019 / 12:12 AM / UPDATED 10 HOURS AGO

China Belt and Road power investments surge from 2014-2019: study

China's total coal-fired capacity also expected to rise by another 45 GW this year, with the total eventually expected to peak at around 1,300 GW, up from 1,140 GW at the end of last year, researchers from China's State Grid said this month.

So in 2019 alone, China is opening 264% of the coal plants the total coal plants the US will be shuttering by 2025.

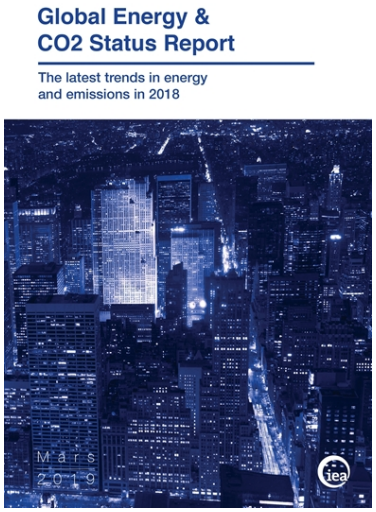
Not only is all this coal generation coming online, but oil and gas companies plan to produce all of their reserves. Royal Dutch Shell announced in the wake of the Paris Climate Accords that:[8]

AMSTERDAM (Reuters) - Royal Dutch Shell expects to pump out all the fossil fuel reserves listed on its balance sheet, its chief executive said, dismissing concerns that production limits in the wake of the Paris climate accord could hit the energy giant's valuation.

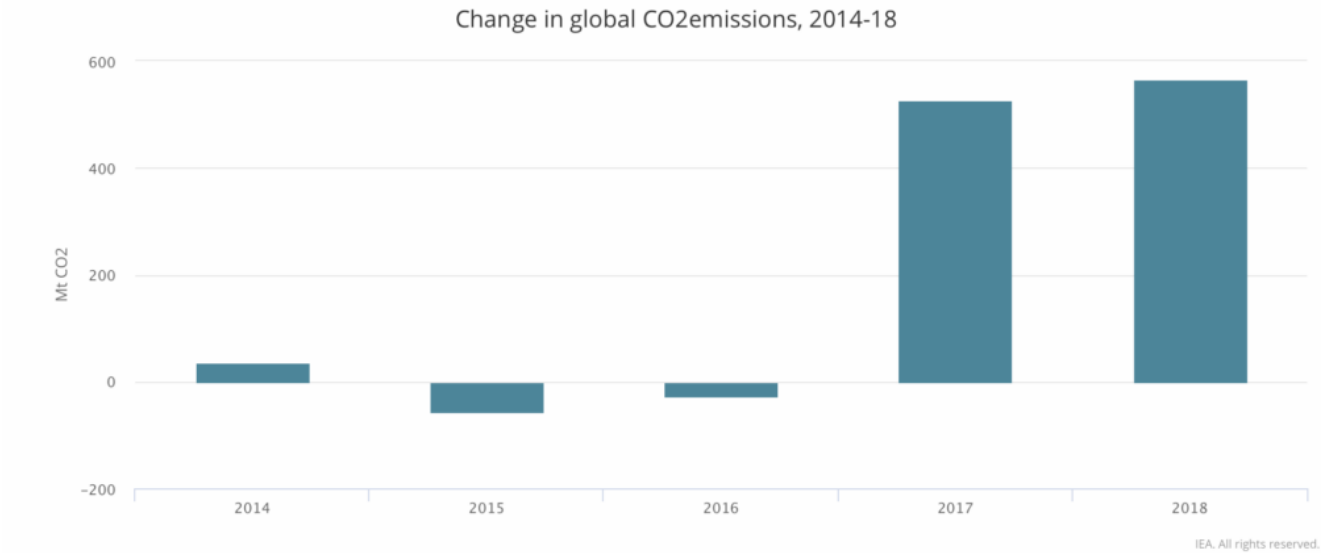
For all its arm-waving about no longer financing fossil fuel development around the world, the World Bank is financing four times as much in coal, oil and gas projects as in wind and solar projects — $21 billion for fossil fuels vs. $7 billion for renewables.[9] This is "undermining the Paris Climate Agreement," according to the German climate NGO, Urgewald.

While many say emissions of manmade greenhouse gas emissions should be cut, no no one is actually cutting them.

As of July 2018, 197 of the world's 210 nations had ratified the 2015 Paris Climate Accords calling for global reductions in CO2 emissions. But consider the March 2019 UN report, "Global Energy and CO2 Status Report."[10]

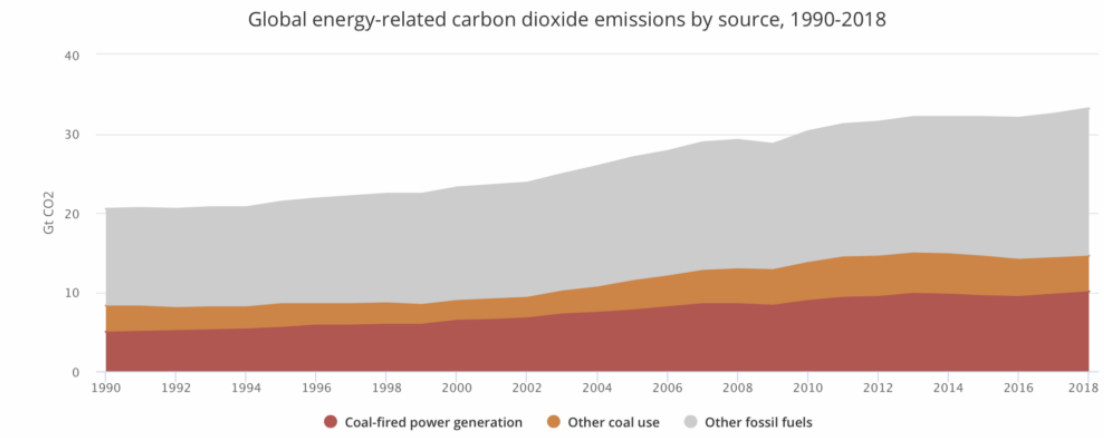


The report shows that despite that 94% of the world's nations have signed onto the Paris Climate Accords, emissions are not being cut. Consider the chart, *below*, from the UN report.

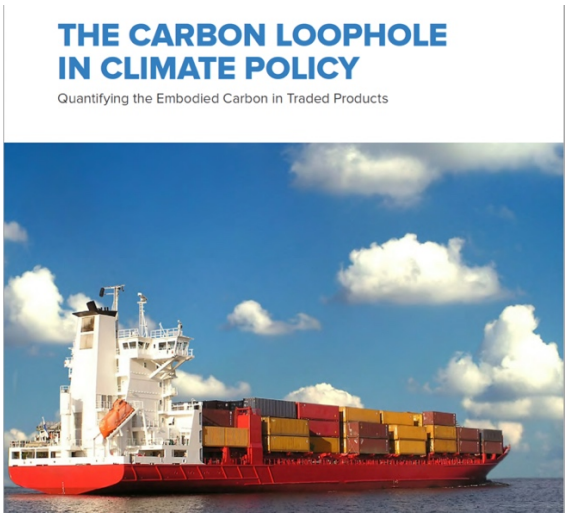


Not only are emissions not declining, they are rising dramatically — in line with the UN statement from its "Emissions Gap Report 2018:"

Global greenhouse gas emissions show no signs of peaking.

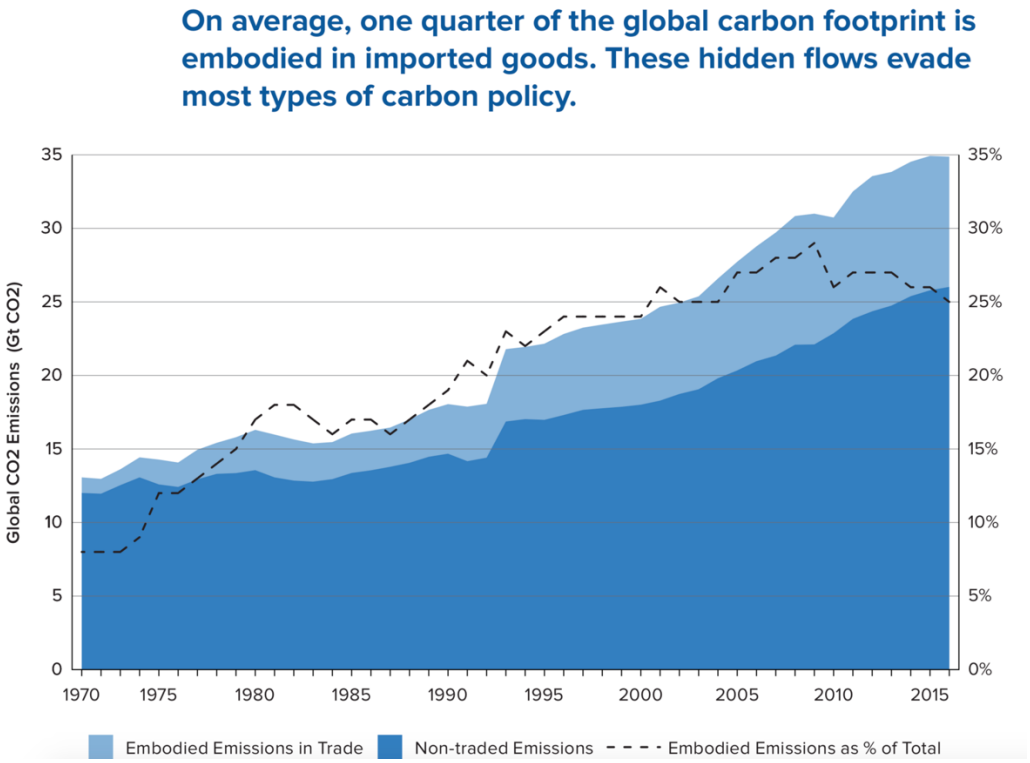


Further, any claims of emissions cuts are most likely false as pointed out in an August 2018 report from the Climateworks Foundation, entitled "The Carbon Loophole: Quantifying the Embodied Carbon in Traded Products."[11]



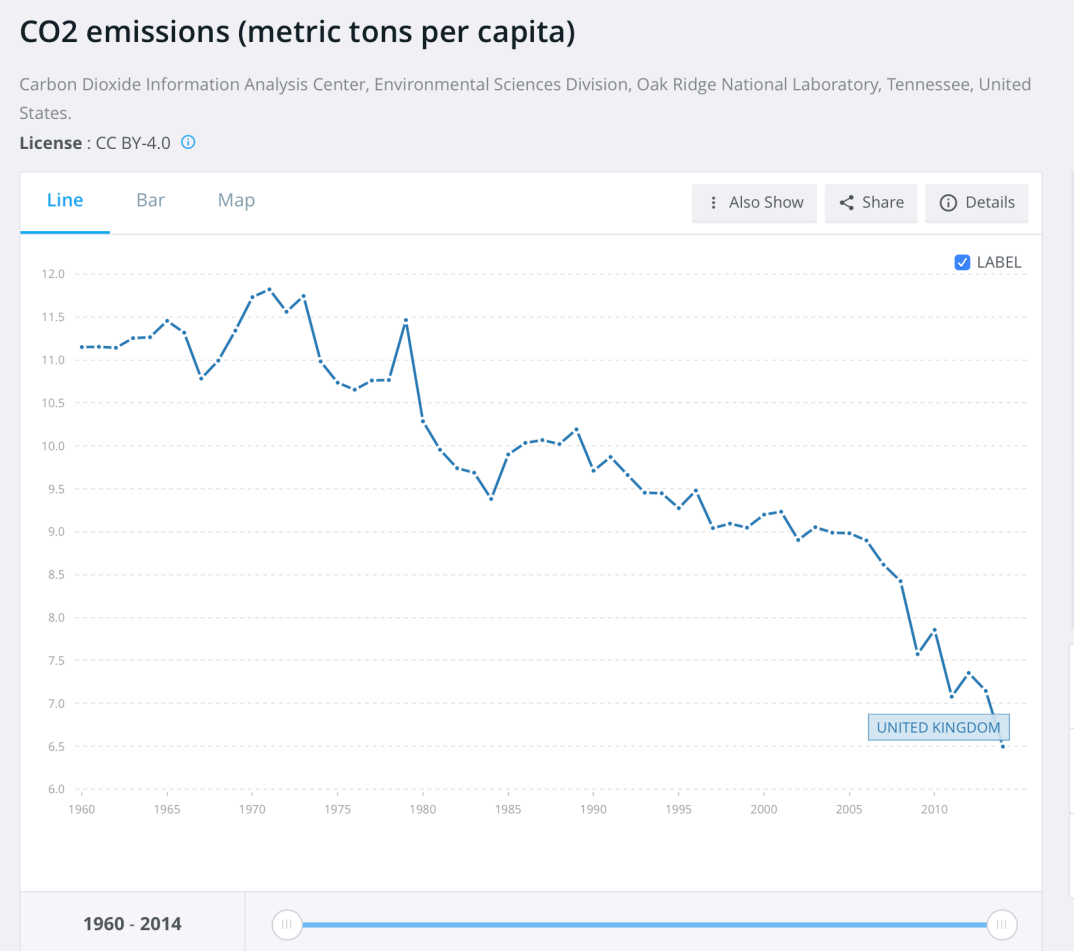
Wealthy and formerly heavily industrial nations — e.g., the U.S. and Western Europe — have shifted much of their industrial manufacturing to China, India, Mexico and other countries where labor is cheaper and environmental and workplace regulation is less expensive.

While this outsourcing of energy-intensive industrial manufacturing to other countries necessarily reduces the direct greenhouse gas emissions of the wealthy nations, it has not reduced any actual emissions on a global basis. As "The Carbon Loophole" reports, on a global basis, about 25% of global emissions have simply been shifted between countries.



As an example of this so-called "carbon loophole," consider the case of the United Kingdom.

The World Bank chart, *below*, purports to show that per capita carbon dioxide emissions in the UK have declined significantly since 1960.



However, according to the "Carbon Loophole" report, imports to the UK now represent about 5.7 metrics tons of greenhouse gases on a per capita basis.

Top 10 importers of carbon/capita - in ton CO_2 per person		Top 10 importers of carbon/GDP - in ton CO_2 per 1 million US$	
Luxembourg	27.1	Slovakia	472
Finland	7.9	Lithuania	419
Slovakia	7.6	Estonia	310
Austria	7.3	Latvia	294
Sweden	6.7	Cyprus	283
Denmark	6.3	Luxembourg	267
Netherlands	6.2	Greece	264
Lithuania	5.9	Bulgaria	261
Ireland	5.7	Czech Republic	260
UK	5.7	Slovenia	235

Adding the current World Bank per capita carbon footprint of the UK (~6.5 tons) to the carbon footprint of UK imports (~5.7 tons), the actual per capita carbon footprint of the UK is 12.1 tons — which is about 10% greater than the 1960 per capita carbon footprint of the UK of 11 tons. And this increase in per capita footprint remains despite all the improvements in technology and efficiency made over the past 60 years.

The undeniable reality is that manmade greenhouse gas emissions are at a record — 53.5 BILLION tons annually — and are rising with no end in sight.

For anyone who is skeptical of the "no end in sight' conclusion, consider that global population, now at about 7.7 BILLION is expected to rise dramatically — to 9.8 BILLION by 2050 and 11.2 BILLION by 2100.[12]

These coming BILLIONS of people will require food, housing, transportation and other goods and services that do and will continue to require the burning of coal, oil and natural gas and their attendant emissions of carbon dioxide.

Fact 3. US emissions are relatively insignificant and irrelevant to climate, according to UN models

There are two realities that support Fact 3.

Reality 1: Even if the US emissions were ZERO, the rest of the world's emissions are way above the Kyoto Protocol's goal (i.e., 46.5 BILLION tons vs 35 BILLION tons).

Of the 53.5 BILLION tons of carbon dioxide-equivalents (CO2) emitted in 2017, the U.S. share was 13.1%. or about 7 BILLION tons, according to the UN.

Imagine that the U.S. went entirely dark and emitted no more manmade CO2.

The rest of the world, which shows no signs of emitting less CO2, would still emit at least 46.5 BILLION tons of CO2 every year — and that 46.5 BILLION tons is a figure that is only increasing.

Now recall that the goal of the 1997 Kyoto Protocol was to reduce and stabilize CO2 emissions to 1990 levels of around 35 BILLION tons of CO2.

> ***Reality 2: Even if the US stopped emitting today, the difference in atmospheric greenhouse gas concentrations and global temperature would not be meaningfully different from the US not cutting emissions.***

If the U.S. stopped emitting CO2 immediately, the atmospheric CO2 level would be approximately 29 parts per million (ppm) less by the year 2100.[13] Today's atmospheric CO2 level is at about 412 ppm and is increasing at a rate of a little more than 2 ppm per year. So if emissions don't decrease — and the UN doesn't expect them to — we can expect that atmospheric CO2 will be at about 412 ppm + (2 ppm/year x 81 years) or 574 ppm by the year 2100. So if the US shut down immediately, atmospheric CO2 would be reduced to 574 ppm minus 29 ppm = 545 ppm. Based on IPCC modeling, the difference in mean global temperature produced by 574 ppm vs. 545 ppm is not discernibly different.

So if US emissions are relatively insignificant and irrelevant to climate — and they are — it goes without saying that registrant emissions cuts are even more insignificant and irrelevant.

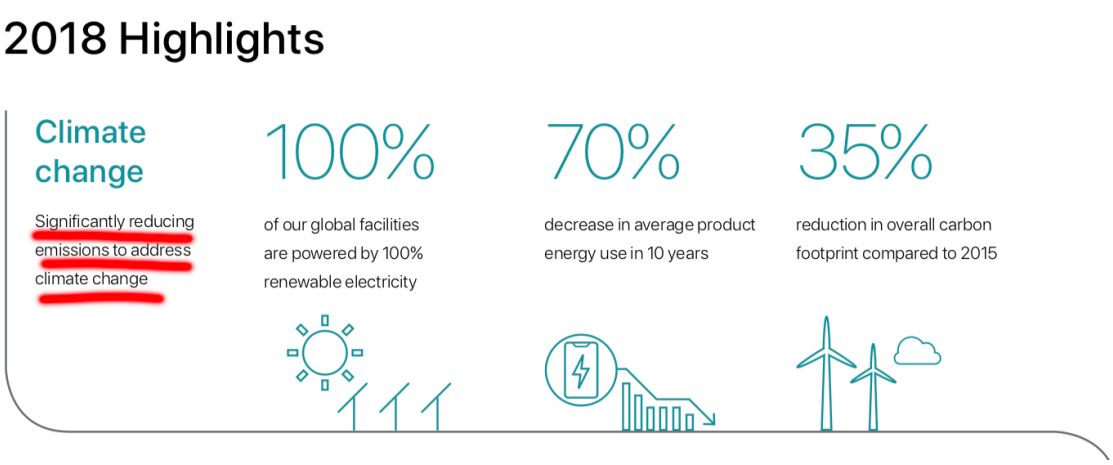
III. Registrants are making false and misleading claims about climate.

The Commission's 2010 Guidance was intended to guide registrants on climate-related disclosures as they related to various potential risks to their businesses. But registrants have taken the climate issue way beyond risks to business; they now use claims about climate to tout their actions to investors. Below are several examples of false/misleading statements made by registrants on climate.

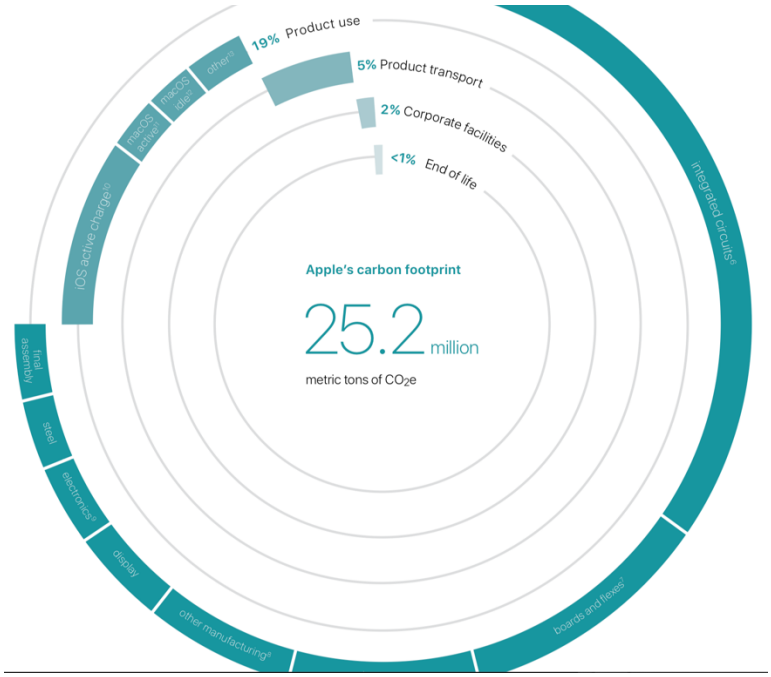
A. Example — Apple, Inc.

Consider for example, the statements of the Apple, Inc. ("Apple") as made in its 2019 "Environmental Responsibility Report."[14]

As below, Apple states in its report that it is "significantly reducing emissions to address climate change" (emphasis added).



But what does this really mean? Apple subsequently discloses that its so-called carbon footprint (i.e., emissions of greenhouse gases) is about 25 million tons of CO2.



Based on the UN's Emissions Gap Report 2018" reporting total manmade emissions of 53.5 billion tons of CO2, Apple's 2018 CO2 emissions were about .047 percent (0.047%) of global emissions (i.e., 25 million tons divided by 53.5 billion tons).

So Apple's CO2 emissions are less than five-hundredths of a percent of the total global emissions that contribute to atmospheric CO2 levels.

Keeping in mind that Apple claims it is "significantly reducing emissions to address climate change, Apple discloses that its emissions declined 4.8 million tons, about .009 percent (0.009%) of global emissions.

> In fiscal year 2018, we reduced our comprehensive carbon footprint for the third year in a row—down 35 percent compared to 2015. A major contributor to the decrease was Apple's Supplier Clean Energy Program, which lowered our carbon footprint by nearly 3.6 million metric tons compared to last year. We also made several product design changes that reduced our carbon footprint, like sourcing aluminum made with hydroelectricity and recycled content, improving product energy efficiency, and redesigning integrated circuits to use less silicon. Together, these product design changes resulted in 4.8 million fewer metric tons of carbon emissions compared to last year.

In absence of any other information, Apple's claimed reduction of 4.8 million tons of CO2 appears to be a significant cut in emissions. However, in the context of global CO2 emissions it

is obviously insignificant and meaningless. Apple's total carbon footprint of 25 million tons is similarly insignificant and meaningless.

The statement, then, that Apple is "significantly reducing emissions to address climate change" is materially false and/or misleading. Apple's carbon footprint and its emissions cuts:

- Are insignificant in the context of atmospheric CO2 emissions; and
- Fail to "address" climate change in any meaningful way.

Any reader who makes an investment decision based on Apple's climate statements as currently formulated is being misled.

Apple's climate statements might possibly be repaired and be made less misleading by placing them in context of the reality of total global emissions. This would give investors essential context by which to evaluate the statements. But as is, they violate both disclosure and anti-fraud provisions of the securities laws.

B. Example — ExxonMobil Corporation

Let's consider ExxonMobil's "2019 Energy and Carbon Summary" report.[15]

The report features an introductory letter from the ExxonMobil CEO Darren Woods.

2019 ENERGY & CARBON SUMMARY LETTER FROM THE CHAIRMAN

There are few challenges more important than meeting the world's growing demand for energy while reducing environmental impacts and the risks of climate change.

ExxonMobil is committed to doing our part to help society meet this dual challenge.

Energy underpins modern life. People around the world rely on energy to cook their meals, heat their homes, fuel their cars, and power their hospitals, schools and businesses. Our industry plays a critical role in fulfilling society's economic needs and providing the foundation for a healthier and more prosperous future.

We also play an essential role in protecting the environment and addressing the risks of climate change. ExxonMobil is taking significant steps to minimize the greenhouse gas (GHG) emissions from our own operations. For example, we have committed to reducing methane emissions from our operations by 15 percent and flaring by 25 percent by 2020*, as well as reducing the GHG intensity at our operated Canadian oil sands facilities by 10 percent by 2023*.

Since 2000, we have invested more than $9 billion in our facilities and research to develop and deploy lower-emission energy solutions such as cogeneration, algae biofuels, and carbon capture and storage (CCS). We have partnered with more than 80 universities around the world to support emerging energy research.

At the same time, we help our customers reduce their emissions through the use of our energy-saving technologies and sustainable products.

We also actively engage in climate-related policy discussions. We understand that dealing successfully with climate change risks will require a coordinated effort involving individuals, governments and industry leaders around the world. ExxonMobil supports the 2015 Paris Agreement. In 2017 we became a founding member of the Climate Leadership Council to help promote a revenue-neutral carbon tax. And last year we joined the Oil and Gas Climate Initiative (OGCI), a voluntary collaboration of leading companies in our industry aimed at reducing climate-related risks.

Together with our Board of Directors and senior management team, we regularly review our efforts to address climate-related matters.

This year's *Energy & Carbon Summary* details some of these efforts. It is aligned with the core elements of the framework developed by the Financial Stability Board's Task Force on Climate-related Financial Disclosures, designed to encourage the informed conversation society needs on these important issues. Through our active participation in this conversation, and our ongoing actions to meet energy needs and environmental expectations, ExxonMobil will continue to take a leadership role in meeting the world's dual challenge.

Darren Woods, Chairman and CEO

*when compared to 2016

p.1 | exxonmobil.com

Let's consider some of the letter's content. Here's the opening section:

> **There are few challenges more important than meeting the world's growing demand for energy while reducing environmental impacts and the risks of climate change.**
>
> **ExxonMobil is committed to doing our part to help society meet this dual challenge.**

Woods claims that ExxonMobil is "doing our part" to reduce the risks of climate change. We'll have to assume that he is limiting "doing our part" to the notion of manmade climate change as supposedly caused by manmade greenhouse gas emissions. He can't mean stopping all climate change because the global climate changes naturally and there is nothing that humanity, let alone ExxonMobil, can do about that. So let's continue explore whether ExxonMobil is doing "its part" to reduce the risks of manmade climate change as per Woods' letter.

The next paragraph of interest reads:

> We also play an essential role in protecting the environment and addressing the risks of climate change. ExxonMobil is taking significant steps to minimize the greenhouse gas (GHG) emissions from our own operations. For example, we have committed to reducing methane emissions from our operations by 15 percent and flaring by 25 percent by 2020*, as well as reducing the GHG intensity at our operated Canadian oil sands facilities by 10 percent by 2023*.

Woods claims ExxonMobil "plays an essential role in addressing the risks of climate change." Is this assertion true?

Assuming that Woods is referring to manmade climate change and further assuming that manmade emissions of greenhouse gases are causing climate change let's consider some facts — key facts not mentioned or even alluded to by Woods.

As mentioned previously, the UN recently estimated manmade global greenhouse gas emissions in 2017 to have been 53.5 BILLION tons of CO2-equivalents. That seems like an awful lot of manmade greenhouse gas emissions and Woods claims ExxonMobil plays an "essential role" in reducing the attendant risk. Is that true? Before we get to whether ExxonMobil is playing an "essential role" in reducing the risks of manmade emissions, let's consider the emissions related to ExxonMobil's business.

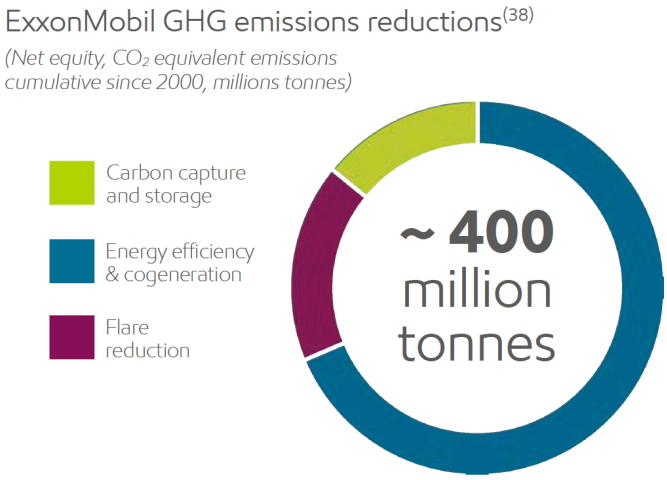
According to ExxonMobil's "2018 Summary Annual Report", ExxonMobil produced 3,833,000 barrels of oil per day in 2018.[16] Multiply that figure by 365 and ExxonMobil produced about 1.4 billion barrels of oil in 2018. When burned, a barrel of oil emits 0.42 tons of carbon dioxide. So in 2018, ExxonMobil sold oil that when burned produced 587,598,900 tons of CO2 (1.4 billion barrels x 0.42 tons of CO2/barrel).

So how significant is this approximately 588 MILLION tons to global climate change? Well, the math is pretty simple. Dividing 588 MILLION tons of ExxonMobil emissions by 53.5 BILLION tons of annual manmade CO2 emissions, we find that ExxonMobil's production is responsible for emitting about 1.1% of the manmade CO2 emitted annually.

So if there is a climate change problem caused by manmade CO2 emissions, ExxonMobil is only responsible for about 1 percent of it. If ExxonMobil magically stopped operating, about 99 percent of the supposed problem would still remain.

Woods maintains that ExxonMobil "plays an essential role in addressing the risks of climate change." Woods specifically cites commitments to reduce emissions from its methane and Canadian oil sands operations. Although these planned cuts are not specified, we can get an idea of their magnitude from previous operation emissions cuts.

Here's the chart ExxonMobil presents of its emissions cuts from operations.



So ExxonMobil claims to have reduced its emissions from operations by 400 million tons since 2000 — the is, emissions from operations have been reduced on average of about 22.2 MILLION tons per year (i.e., 400 MILLION tons divide by 18 years).

While Woods pats ExxonMobil on the back for reducing operational emissions by 22.2 MILLION tons per year, keep in mind that ExxonMobil sold oil worth 588 MILLION tons of emissions last year… and similar albeit slight lesser amounts in earlier years. Anyway you look at it, though, claims about ExxonMobil's operational emissions cuts are trivial and simply ridiculous. To unsophisticated readers, they are misleading.

But that is not likely the end of the deception over operational emissions cuts.

Consider the "flare reduction" portion of the operational. That methane not flared off is instead captured to be sold as product. ExxonMobil may not be *wasting* the methane, but someone else is ultimately burning it as fuel… meaning greenhouse gas emissions.

Next, consider the "carbon capture and storage" claim. To the extent that CO2 emissions are captured and stored, this is through the process of enhanced oil recovery (EOR). This is a total sham as far as CO2 storage goes. While CO2 may be physically stored through EOR, the CO2

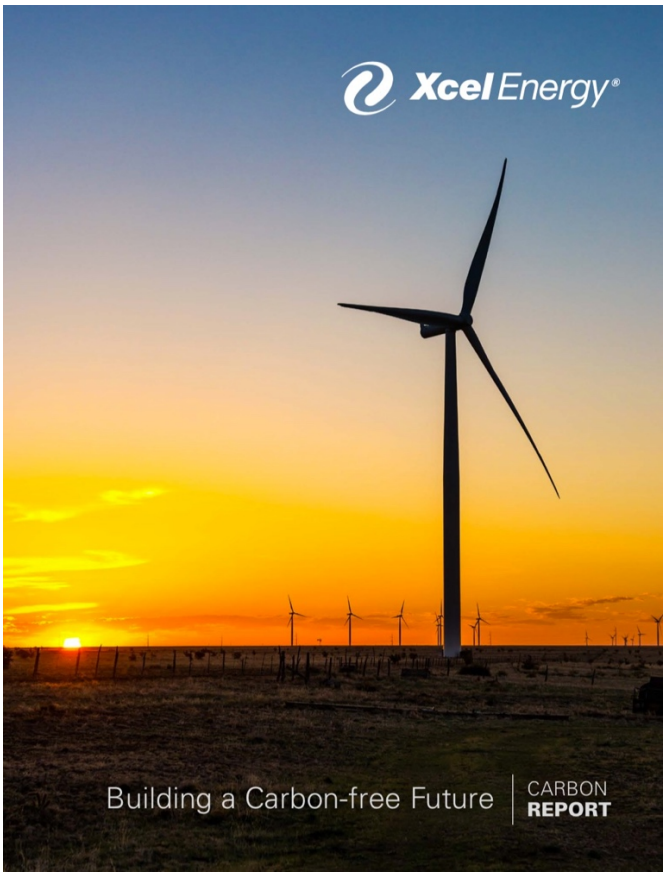
emissions from the oil produced via EOR exceed the amount of CO2 stored.[17] So EOR actually results in a net increase in CO2 emissions.

But however you slice it, ExxonMobil's operation emissions cuts — even if real — are insignificant in the context of all the oil and gas that ExxonMobil produces.

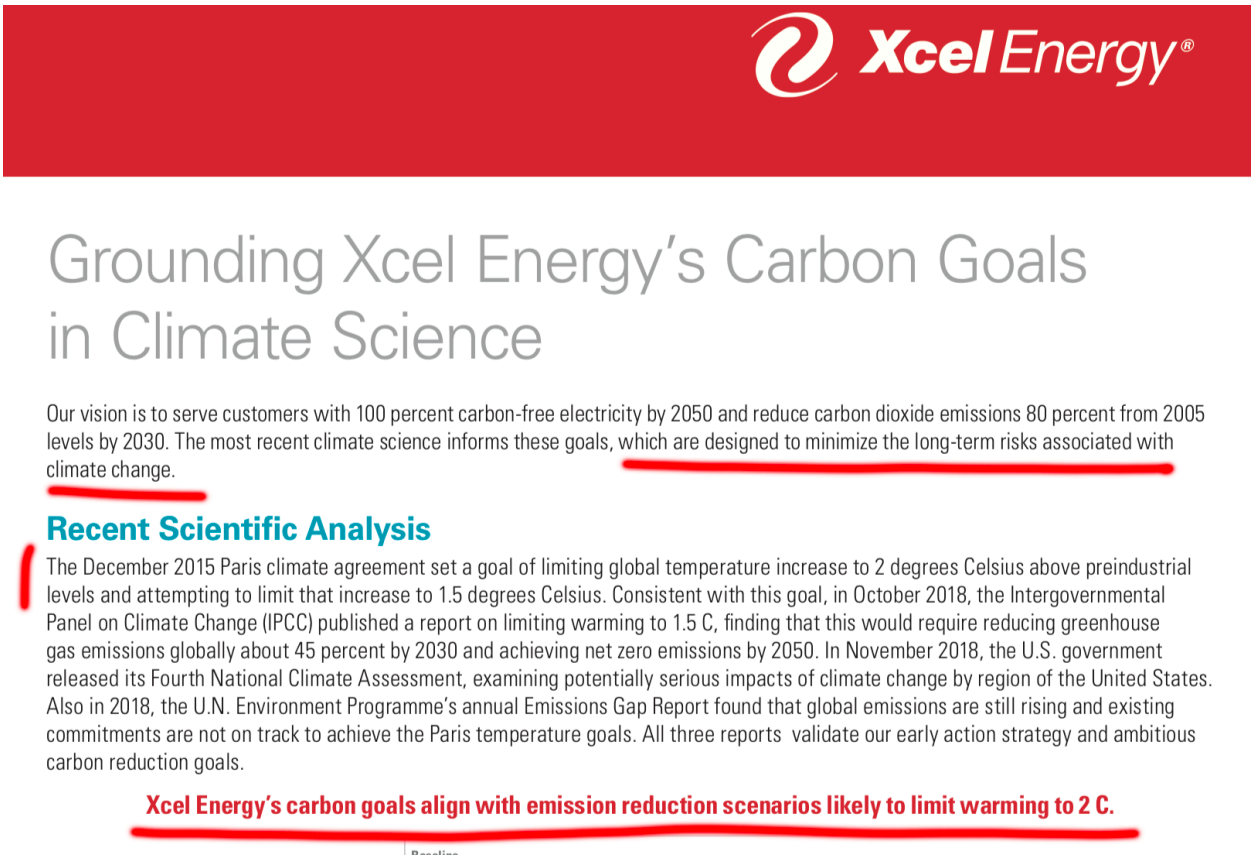
But keep in mind that Woods maintains that ExxonMobil is playing an "essential role" in reducing the risks of manmade emissions. Well go ahead… divide 22 MILLION by 53.5 BILLION and see what you come up with… that's right… 22 MILLION is 0.04% of 53.5 BILLION. That's ExxonMobil's "essential role"? Reducing global emissions by 0.04%? That is absurd.

C. Xcel

Exelon has published a report entitled, "Building a Carbon-free Future."[18]



Xcel makes three false and/or misleading assertions in its one-page summary of the report's scientific basis.[19]



Xcel Energy®

Grounding Xcel Energy's Carbon Goals in Climate Science

Our vision is to serve customers with 100 percent carbon-free electricity by 2050 and reduce carbon dioxide emissions 80 percent from 2005 levels by 2030. The most recent climate science informs these goals, which are designed to minimize the long-term risks associated with climate change.

Recent Scientific Analysis

The December 2015 Paris climate agreement set a goal of limiting global temperature increase to 2 degrees Celsius above preindustrial levels and attempting to limit that increase to 1.5 degrees Celsius. Consistent with this goal, in October 2018, the Intergovernmental Panel on Climate Change (IPCC) published a report on limiting warming to 1.5 C, finding that this would require reducing greenhouse gas emissions globally about 45 percent by 2030 and achieving net zero emissions by 2050. In November 2018, the U.S. government released its Fourth National Climate Assessment, examining potentially serious impacts of climate change by region of the United States. Also in 2018, the U.N. Environment Programme's annual Emissions Gap Report found that global emissions are still rising and existing commitments are not on track to achieve the Paris temperature goals. All three reports validate our early action strategy and ambitious carbon reduction goals.

Xcel Energy's carbon goals align with emission reduction scenarios likely to limit warming to 2 C.

First, Xcel's "carbon goals" are not "designed to minimize the long-term risks associated with climate change." Xcel emits about 50 million tons of CO2 per year — i.e., less than 0.09% of global manmade CO2 emissions. Xcel could emit zero carbon dioxide, and it would make no difference to global climate.

Second, Xcel implies that the 2 degree Celsius (2C) goal of the Paris climate agreement and the 1.5 (1.5C) degree Celsius goal of a subsequent IPCC report are science-based. This is false. There is, in fact, no scientific for the 2C or 1.5C goal, a fact first revealed in the 2009 Climategate e-mails.[20]

Climategate 2.0: Jones says 2-degree C limit 'plucked out of thin air'

If you've been wondering where the official 2° C ceiling on temperture increase came from, Phil Jones enlightens us.

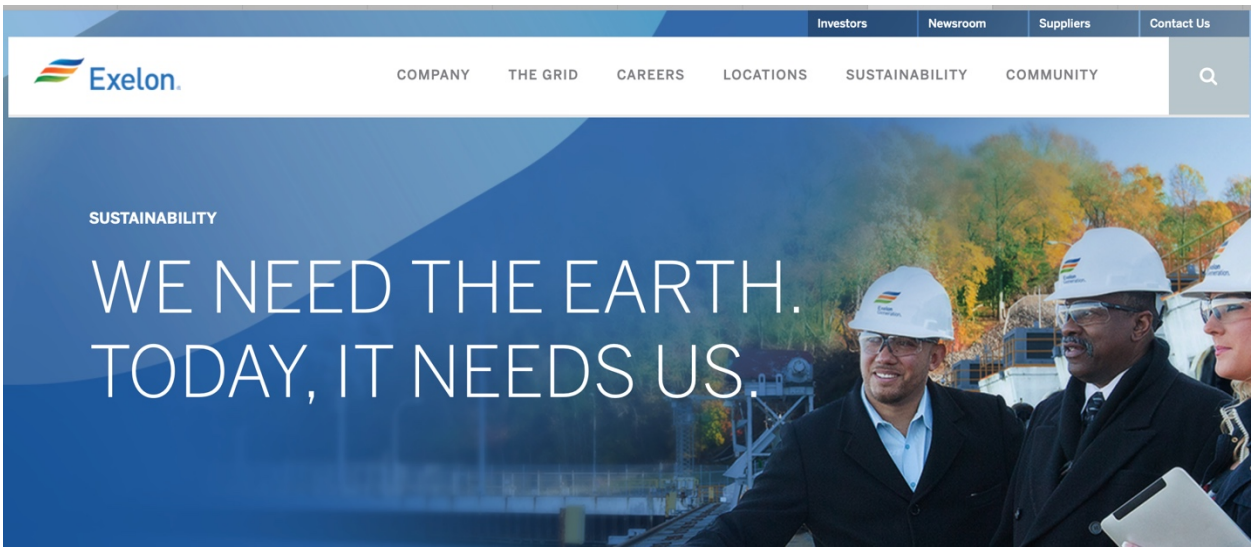
From the Climategate 2.0 collection, to a European Peoples Party officials who is trying to eliminate skepticism from the EPP's position paper on climate, Phil Jones describes the origin of the 2° limit:

> *The 2 deg C limit is talked about by a lot within Europe. It is never defined though what it means. Is it 2 deg C for the globe or for Europe? Also when is/was the base against which the 2 deg C is calculated from? I know you don't know the answer, but I don't either! I think it is plucked out of thin air. I think it is too high as well. If it is 2 deg C globally, this could be more in Europe – especially the northern part. A better limit might be maintaining some summer Arctic sea ice!*

Third, Xcel's statement that its "carbon goals align with emissions reduction scenarios to limit warming to 2C" is misleading for the reasons described above. Xcel's emissions are trivial compared to the total global emissions (i.e., 53.5 BILLION tons) and the 2C goal is not at all based in science.

D. Exelon

Some registrants just make wild statements. On its web site, for example, Exelon boasts:



You might think a web site that proclaims "WE NEED THE EARTH. TODAY, IT NEEDS US" might be that of an environmental activist group. Yet Exelon is an electric utility.

That statement is part of Exelon's campaign to tout emissions cuts via the closure of coal plants:[21]

WHY EXELON DIVESTED FROM COAL: THE CASE FOR CLEAN ENERGY

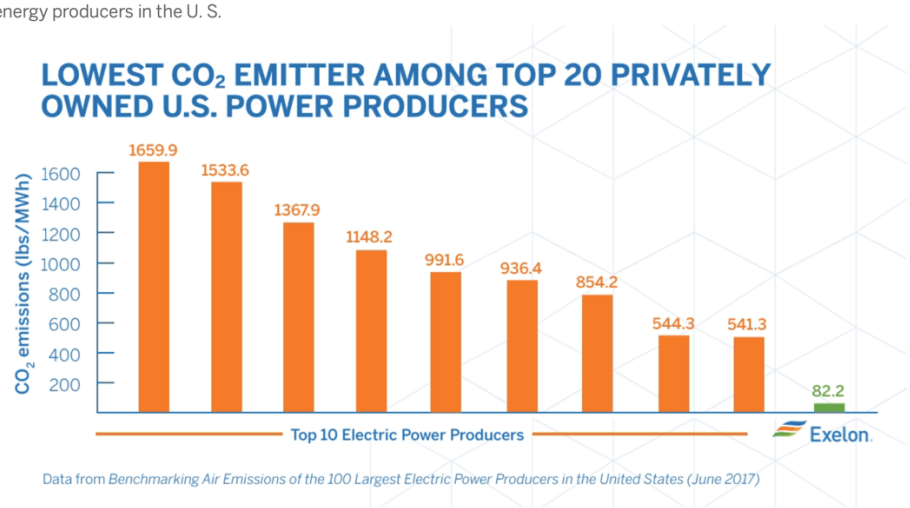
Business as usual won't suffice for energy companies. The time to invest in a cleaner energy future is now.

Toward this coal-free end Exelon explains that:

As part of Exelon's 2020 commitment to reduce greenhouse gas emissions by more than 15 million metric tons per year, we chose to retire and sell all of our coal-fired generation interests in the last decade. In February 2017, Exelon sold its 26-megawatt interest in Utah's Sunnyside power plant, our final coal-fired asset. Today, we continue to expand our utilities' energy- efficiency programs, as well as our nuclear, wind, solar and hydro-generating capacity.

and that:

Exelon's clean energy solutions are working. The U.S. Energy Information Administration and Environmental Protection Agency data shows that Exelon has the lowest CO2 emissions rate among top-20 privately owned energy producers in the U. S.



These claims seem impressive — but only in a factual vacuum. They are misleading amid the reality of the nature of climate change, energy production and global CO2 emissions.

Global CO2 emissions are at 53.5 BILLION tons. Exelon's goal of reducing its CO2 emissions by 15 MILLION tons per year is miniscule and irrelevant in the context of global emissions. Exelon's retirement of its coal plants is also irrelevant. While Exelon shutters a coal pant or two, China alone aims to build 500 new coal plants by 2030, as previously mentioned. Exelon states that its

'clean energy solutions are working." What does that mean? Exelon's emissions may be decreasing, but global emissions are not. So precisely how are Exelon's solutions "working"?

IV. The Commission should take action to prevent registrants from making false and/or misleading statements related to climate.

The above-mentioned examples and many other registrant statements concerning climate are false and/or misleading because they lack necessary context. Statements boasting about cutting even MILLIONS of tons of CO2 emissions in a world where 53.5 BILLION tons are being emitted every year is false and/or misleading. Registrant statements about capturing and storing carbon or shutting down coal plants are commonly exaggerated way out of all proportion.

Such statements mislead investors by giving them the false impression that the emissions are cuts are at all significant or meaningful. Regardless of one's views on climate science, simple math shows that no registrant can affect climate in any discernible manner. No single registrant is "saving" the planet. All U.S. registrants taken together can't "save" the planet by even by eliminating all their emissions. The math is simple. Claims to the contrary are false and/or misleading.

It is a fundamental principle of the securities laws that if a registrant chooses to speak, it must do so truthfully. The duty to be honest is basic. Partial disclosure that is materially misleading, especially if an investor acts on it, is fraud. In the case of climate, the omission of context — e.g., that is the actual insignificance of touted emissions cuts — is partial disclosure amounting to a fraud.

The Commission should issue new climate guidance to registrants instructing them that, if they choose to talk about climate, they must do so honestly and with full disclosure with respect to the significance of their actions. If a registrant wants to report that it has cut its emissions by 25 MILLION tons, it should also be required to report that, in the context of a world where manmade emissions amount to 53.5 BILLION tons, the 25 MILLION tons of emissions cuts amounts to 0.047% of global emissions.

V. The Division of Corporation Finance has issued no-action letters consistent with this petition

The Division of Corporation Finance recently issued two no-action letters consistent with this petition.

At the end of 2018, I submitted nearly identical shareholder proposals to Duke Energy and to Exelon requesting that the companies report to shareholders on the actual costs and benefits of their much-touted environment-related activities. Both companies tout the closure of coal-fired power plants as means of reducing their CO2 emissions. In both shareholder proposals, I

spotlighted the insignificance and misleading nature of the touting of their claimed emissions cuts.

Both companies submitted requests to the Division of Corporation Finance asking that the Commission take no action if my proposals were excluded. In their requests, both companies claimed as a reason for granting their no-action letters that they already had implemented my proposal by discussing climate in the manner they did and in other documents.

I responded by pointing out that in no document or statement did the companies place their emissions cuts and coal plant closures in appropriate perspective. As such, the companies were misleading investors. The companies had also tried to mislead Division of Corporate Finance staff by falsely claiming they were making disclosures that they were not actually making.

The Division of Corporate Finance subsequently rejected both Duke Energy's and Exelon's no-action requests by stating:[22]

> We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that the Company's public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Summary

The two pillars of the federal securities laws and regulations are the full disclosure and anti-fraud provisions. Registrants now routinely make false and/or misleading statements about their own actions with respect to global climate change. The Commission should issue guidance so that registrants stop making false and/or misleading climate-related statements and disclosures.

Respectfully submitted,

Steve Milloy, MHS, JD, LLM
Director

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[1] 75 *Federal Register* 6290-6297 (February 10, 2010).
[2] https://www.unenvironment.org/resources/emissions-gap-report-2018
[3] https://www.nytimes.com/2017/07/01/climate/china-energy-companies-coal-plants-climate-change.html

[4] https://www.bloomberg.com/news/articles/2019-04-19/china-s-far-from-done-with-coal-as-regulator-eases-new-plant-ban
[5] https://unearthed.greenpeace.org/2019/03/28/china-new-coal-plants-2030-climate/
[6] https://www.eia.gov/todayinenergy/detail.php?id=40212
[7] https://www.reuters.com/article/us-china-renewables-silkroad/china-belt-and-road-power-investments-surge-from-2014-2019-study-idUSKCN1UP093
[8] https://www.reuters.com/article/us-shell-afpm/shell-to-quit-us-refining-lobby-over-climate-disagreement-idUSKCN1RE0VB
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[10] https://www.iea.org/geco/
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[21] https://www.exeloncorp.com/grid/why-exelon-divested-from-coal-the-case-for-clean-energy
[22] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/stevenmilloy031219-14a8.pdf and https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/milloyexelon031219-14a8.pdf.