

Example of Memo for Disclosure Reporting Emissions Data - Model 2

Prepared by Bobbie Burkland*

To: ██████████ Sustainability Council
From: ██████████, ██████████ Legal Department
Date: February 25, 2021
Subject: Greenhouse Gas Emissions Disclosures

Background

Members of the Council requested our department consider whether additional emissions-related information should be disclosed to the public. This memo provides our recommendations and suggested approach to reporting emissions-related data. Our suggested action items listed at the end of this memo are based on the recent emphasis investors place on transparency¹ and accessibility to climate-focused data. We also considered the risks associated with making additional disclosures and have tailored our recommendations to minimize those risks and to align with current and past information we are legally required to disclose.

Question Presented

██████████'s current GHG emissions disclosures comply with SASB's Greenhouse Gas Emissions and Resource Planning Metric² and GRI's 302 Energy Metric³, which call for Scope 1 emissions disclosure. However, in light of the increased desire for transparency and for disclosure of emissions beyond Scope 1 by industry investors, should ██████████ consider expanding its disclosure in its Annual Sustainability Report to more clearly address its connection to activities and investments in the upstream oil and gas sector for the purpose of enhancing its transparency and to protect its clean energy reputation?

¹ See ██████████, Proxy Statement (Schedule 14a), 17 (Apr. 3, 2020).

² Green House Gas Emissions & Res. Plan. Metrics IF-EU-110a.1-4 (Sustainability Accounting Standards Board 2018).

³ GRI 302: Energy Disclosures 302-2, 4-5 (Global Sustainability Standards Board 2016).

Short Answer

We recommend ██████ make more information about its upstream oil and gas business public through disclosures that are limited in scope. There are risks associated with additional disclosure, including the potential for increased legal risk, but we foresee the predominant risk as reputational—calling into question ██████’s image as a source for clean energy. We recommend taking a limited disclosure approach to ensure consistency with our image and official public statements while maintaining consistency with SEC and other regulatory filings. A number of factors were considered in forming this recommendation which we delve into greater detail below. We believe the risks deriving from the failure to disclose pertinent information is likely to outweigh the risks of the limited disclosure approach we recommend. Additionally, our research of recent trends in the industry suggests our competitors are moving towards Scope 2 and 3 emissions disclosures in their annual reporting.⁴ Providing additional disclosure keeps ██████ at the forefront of this trend which supports its commitment to being a clean energy provider. We believe the disclosure we recommend strikes the appropriate balance between investor requests and internal concerns. Our recommended actions present ██████ with the opportunity to highlight its diversified portfolio, its safety record and overall attention to environmentally sound practices and can be used as an illustration to investors who requested we improve transparency.

⁴ See BP p.l.c., BP Sustainability Report 24 (2019), <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2019.pdf>; Equinor ASA, Sustainability Report 31, (2019), <https://www.equinor.com/en/how-and-why/sustainability/sustainability-reports.html>; Chevron Corp., 2019 Performance Data 1 (2019), <https://www.chevron.com/-/media/shared-media/documents/2019-sustainability-performance-data.pdf>.

Discussion and Recommendations

Legal Status of Trinity Operating

██████████'s portfolio is diversified comprising of a robust portfolio of clean energy assets and technologies coupled with substantial fossil fuel-based infrastructure.⁵ More recently, ██████████ expanded its upstream portfolio to include properties located in Oklahoma, Louisiana and Texas, which were intended to support ██████████'s existing gas-powered infrastructure achieving improved efficiency and resiliency. As a result, ██████████ created an internal oil and gas division dedicated to the acquisition and maintenance of those properties and to oversee operations conducted by the privately held operating arm, ██████████. In 2019, ██████████'s drilling activities commenced.⁶ Since that time, ██████████ has been a named party to a number of lawsuits, which we manage in-house and the nature of which such claims are outside the scope of this memo.⁷ As a result of these suits, ██████████ and its subsidiaries were required to publicly disclose the relationship between ██████████, ██████████ and its midstream entities.⁸ With an active drilling program planned for future years, we believe the probability exists for additional public exposure of ██████████'s relationship to ██████████ based on its expanding upstream footprint and the litigious nature that is indicative of this sector.

██████████ maintains its own website which is relatively basic but does include a visual depiction of the location of its operations and its annual production metrics.⁹ Currently, the website does not provide any information surrounding its environmental, social or governance

⁵ See ██████████, Environmental, Social and Governance 9 (2020), <https://www.██████████/content/dam/██████████us/en/pdf/2020%20██████████%20██████████%20Report.pdf>.

⁶ Results based on electronic search of ██████████ performed on TRRC website on Mar. 4, 2021.

⁷ Results based on electronic search of ██████████ performed on PACER database on Mar. 4, 2021.

⁸ See Def. ██████████ Corporate Disclosure Statement at 1-2, Sultan Oil Co. v. ██████████ (██████████), LLC, No. ██████████ (D. Okla. July 24, 2019), No. 22.

⁹ <https://www.██████████/company.html> (last visited 3/9/2021).

practices other than a general statement of its compliance with unidentified standards.¹⁰ We believe [REDACTED]'s lack of public information in this regard is unsatisfactory and may subject [REDACTED] to negative perceptions as its connection becomes common knowledge. In our opinion, [REDACTED] should address some of its environmental, social and governance practices as indicators of its alignment with [REDACTED] policies. We predict [REDACTED]'s activity will generate more interest from key investors as the connection between [REDACTED] and [REDACTED] becomes increasingly apparent over time.

Notably, [REDACTED] is under no legal obligation *currently* to notify investors of activities related to [REDACTED], but we may be required to reconsider this approach should we determine [REDACTED]'s significant subsidiary status has changed, or we identify a risk that we must disclose as material by securities regulations standards.¹¹ In addition, some investors may ignore [REDACTED]'s corporate parentage and choose to view [REDACTED]'s activities as Scope 1 emissions attributable to [REDACTED]. There is some risk that our climate-focused investors may view our chosen omission as an attempt at greenwashing which may damage investor confidence. Rather than wait for one of these events to materialize, we recommend proactively addressing the connection and nature of the activity through controlled methods of public disclosure, such as through our Annual Sustainability Report. There, we may exercise more control over the amount and nature of the information we choose to share. This approach improves our transparency as requested by our investors and discretely delineates the connection both of which places us in greater control of preserving [REDACTED]'s reputation.

Based on these findings, we recommend steps be taken immediately to revise [REDACTED]'s existing web presence to incorporate, at a high level, [REDACTED]'s corporate policies, standards and

¹⁰ *See id.*

¹¹ Results based on electronic search conducted on EDGAR database on Mar. 3, 2021.

procedures which should align with those disclosed by ██████'s public reporting, emphasizing any environmental accomplishments that reinforce ██████'s emphasis on the reduction of emissions as referenced in the Annual Sustainability Report. To improve transparency, we recommend disclosing GHG emissions on ██████'s website and recommend ██████ consider incorporating, within its Annual Sustainability Report, the nature and existence of ██████'s operations either within the "Climate Change and Reducing Emissions" section or within the "████████████████████" section.¹² We do not recommend amending ██████'s emissions figures to incorporate emissions attributable to ██████ due to its privately held, wholly owned status but do suggest footnoting the omission with a link to ██████'s website for emissions-related information. In the future, we believe the better approach is to capture ██████'s output as Scope 2 emissions along with all other upstream suppliers. Also, we suggest ██████ commit to reducing its carbon footprint through operational goals that align with ██████'s carbon reduction aspirations if it has not already done so. We suggest the Council commence discussions with appropriate ██████ and ██████ personnel to ensure operational alignment and to internally set achievable GHG emissions targets that can be fairly and accurately reportable in the future and that parallel ██████'s climate change communications.

Reporting Trends Among Competitors

Our latest Sustainability Report predominantly focuses on ██████'s renewable energy business, battery storage and clean power generating infrastructure.¹³ This message coincides with ██████'s clean energy branding. ██████ also provides detailed metrics for emissions figures in accordance with GRI and SASB metrics.¹⁴ We currently limit our disclosure to Scope 1 which

¹² ██████, at 21, 26.

¹³ See *id.*

¹⁴ *Id.* at 56, 63.

accurately identifies the bulk of our emissions as those originating from our natural gas facilities.¹⁵ Our disclosures appear to be consistent with our 10-K and other filings, so the figures do not currently include any emissions arising from [REDACTED]'s activities.¹⁶ Nevertheless, our disclosures are comparatively less transparent and less detailed compared to some of our larger secondary competitors, including the largest Permian Basin oil and gas operator, Occidental Petroleum Corporation (“Oxy”).¹⁷ Oxy recently made commitments to improve its carbon footprint and to invest in carbon capture and storage technologies, and its sustainability reporting reflects those efforts in great detail, including comprehensive disclosures surrounding its current carbon footprint which includes all recently acquired assets and captures emissions identified as Scope 1 and 2 in nature.¹⁸

While [REDACTED] does not have the heavy fossil fuel upstream presence, our GHG emissions figures are comparable and could draw criticism among climate-focused investors in light of our touted clean energy image. Our Sustainability Report focuses heavily on our past progress, commitments to increasing our renewable energy portfolio, and provides accurate visualizations of our present energy mix.¹⁹ However, we do not address in any meaningful detail the nature and scope of our natural gas or nuclear operations beyond Scope 1 emissions metrics or any future plans we have for these assets that align with our climate aspirations, and we do not address Scope

¹⁵ See *id.* at 62.

¹⁶ See *id.* at 61; see *supra* note 9.

¹⁷ Compare Occidental Petroleum Corp., Performance Reports (2020), <https://www.oxy.com/Sustainability/overview/Pages/Policies%20and%20Programs.aspx> (reporting Scope 1 and 2 emissions, providing separate pathway to net-zero climate report, and separate reporting on other climate-sensitive operations), with [REDACTED] Environmental, Social and Governance (2020), [https://www.\[REDACTED\].com/content/dam/\[REDACTED\].us/en/pdf/2020%20\[REDACTED\]%20\[REDACTED\]%20Report.pdf](https://www.[REDACTED].com/content/dam/[REDACTED].us/en/pdf/2020%20[REDACTED]%20[REDACTED]%20Report.pdf) (reporting Scope 1 emissions and offers only backward-looking accomplishments with no concrete commitments to reduce carbon footprint).

¹⁸ Occidental Petroleum Corp., Climate Report (2020), <https://www.oxy.com/Sustainability/overview/Documents/ClimateReport2020.pdf>.

¹⁹ See [REDACTED].

2 emissions.²⁰ We believe the better approach is to address Scope 2 emissions beginning with an explanation of the nature and activity of those sources within the context of relevant corporate policies and environmental measures we adopt in our sustainability reporting while iterating the continued trend towards declining emissions. We suggest also disclosing the strict adherence of our policies from vendors and affiliates as further evidence of our clean energy commitment. These measures provide additional transparency and keep us competitive with industry counterparts that have chosen to position themselves in the market as climate-sensitive organizations. We recognize the additional effort in identifying all Scope 2 sources; however, we believe the additional work is warranted in order to stay competitive with industry. We expect the burden of additional reporting to also be partially alleviated by our recommendation to incorporate [REDACTED] within Scope 2 emissions during the next reporting cycle rather than to report it sooner as Scope 1 emissions attributable to [REDACTED]. We are happy to review and make recommendations in line with this assessment for other entities the Council identifies as similarly situated.

Summary of Recommendations

We recommend addressing the nature of our relationship with [REDACTED] and its contribution to our [REDACTED] assets. We suggest this recommendation should be accomplished by doing the following:

- 1) Identify [REDACTED] as the predominant operator supplying upstream product to support our gas-based infrastructure located in Oklahoma, Louisiana and Texas. We suggest incorporating this disclosure along with additional language identifying our gas and nuclear plant footprints within the body of the “Climate Change and Reducing

²⁰ *Id.*

Emissions” section or within the “████████████████████” section of ██████’s Sustainability Report.

- 2) Include a footnote in the same section that informs the reader that emissions attributable to ██████ are excluded from ██████’s reported metrics due to its independent ownership nature but include a link to ██████’s website where interested parties are directed to metrics detailing ██████-attributable GHG emissions. This recommendation is in line with how we have dealt with impending divestitures or third-party transfers without triggering additional disclosure from applicable regulations.²¹
- 3) Update ██████’s website with appropriate corporate policies, including policies that address ██████’s commitment to ██████’s environmental goals, specifically its achievements towards emissions reduction. We do not expect for ██████ to provide the breadth and detail upon its initial disclosure given the practicality and time-intensive nature of such disclosures, but we do advise that ██████ work towards disclosure that aligns with appropriate GRI and SASB standards as soon as practicable. This effort will aid in ██████ Scope 2 emissions preparation for the future.
- 4) If not already in place, identify key personnel from ██████ and ██████ who are appropriately positioned to create alignment on internal environmental commitments. Establish operational KPIs for ██████ that achieve ██████’s efforts to reduce GHG emissions and create the appropriate framework to ensure compliance.

We recommend ██████ incorporate Scope 2 emissions in its next Annual Sustainability Report in the same manner and in accordance with GRI and SASB standards it used for reporting

²¹ *Id.* note 26.

Scope 1 emissions. [REDACTED] GHG emissions may be handled in the manner as stated above. Should the Council identify other similarly situated entities, we are happy to review and make recommendations accordingly.

*Bobbie Burkland is a native Houstonian and an LL.M student at University of Houston Law Center. She is a part of the Energy, Environment & Natural Resources program, and the incoming Vice President of the Energy and Environmental Law Society. She is a member of the Texas Bar and received her law degree from South Texas College of Law and her B.B.A. from Baylor University. For the last ten years, she has worked as a commercial negotiator in the oil and gas industry. She is an active member of Citizens' Climate Lobby and several renewable energy organizations. In her free time, she likes to travel and enjoys spending time with her husband and their two corgis, Griffyn and Orian.