

Energy & Sustainability Litigation Updates — April 2024

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Regulatory Update

On March 6, 2024, the SEC issued its long-awaited climate disclosure rule, nearly two years after the draft rule was proposed in March 2022. Significantly, this rule required that: (1) companies disclose climate-related risks; (2) report Scope 1 and Scope 2 greenhouse gas emissions, with assurance requirements phased in over time (although smaller reporting companies are exempt); and (3) disclose the financial statement effects of severe weather events and other natural conditions. The SEC proposed a lengthy phase-in period, extending over several years, before companies would need to comply with these new disclosure requirements. Notably, the final rule features certain critical differences from the one proposed in March 2022, including the removal of the requirement to disclose Scope 3 greenhouse gas emissions.

The rule immediately drew challenges from both conservative and liberal perspectives in a number of different court petitions filed by business organizations, environmental organizations, and US states; common arguments advanced by conservative critics included that the SEC climate disclosure rule was a violation of the major questions doctrine and an impermissible exercise of the SEC's authority (i.e., *ultra vires*), while liberal challenges focused on the "watering-down" of the final climate disclosure rule from the draft rule proposed in March 2022. On March 15, 2024, the Fifth Circuit issued a temporary administrative stay of the SEC climate disclosure rule, so this rule will not enter into force until the courts have a chance to review the rule on the merits.

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