

APRIL 26, 2019

CLIMATE CHANGE CONSIDERATIONS FOR CORPORATE COUNSEL

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TOPICS COVERED

- The Green New Deal
- Climate Change Litigation Update
- Common Climate Shareholder Requests: Climate Action 100+ and TCFD
- State AG Investigations and Shareholder Suits on Climate Disclosures
- Climate Governance Strategies

The Green New Deal And More Recent Developments

GND OVERVIEW

- The Green New Deal was a hypothetical stimulus program with proposals regarding: (1) net-zero GHG emissions; (2) clean air and water; (3) environmental justice; (4) sustainable infrastructure and industrial investment; and (5) job creation
- Resolutions included: overhauling the entire U.S. transportation system, the agricultural sector, building standards, energy generation system, and manufacturing sector
- In February 2019, the associated Senate Resolution failed, and no effectuating legislation is likely to be introduced



LOOKING AHEAD

- Congressional Republicans are reportedly developing legislation to introduce next year that could serve as the GOP framework for addressing climate change.
- Texas Senator John Cornyn is reportedly involved in that effort.
- Lindsay Graham (R-S.C.): “Let's, as a party, say the Green New Deal sucks but climate change is real.”
- Sen. Lamar Alexander of Tennessee has reportedly proposed a five-year "New Manhattan Project for Clean Energy Independence," which would boost spending on energy storage.
- Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) has discussed the need for a bipartisan solution on climate

Climate Change Litigation Update

HYPOTHETICAL

You are managing a piece of common law climate litigation where plaintiffs allege your contributions to climate change have caused them harm. Your IR group has been approached by an activist shareholder seeking enhanced disclosure/commitments on climate change

- Would you know this is happening?
- How do you effectively respond?

CLIMATE CHANGE LITIGATION

- *County of San Mateo v. Chevron Corp. et al.* – Filed July 2017 in CA state court against oil companies, alleging claims including public nuisance and trespass. Plaintiffs are particularly concerned with rising sea levels as a result of climate change. The case was removed to federal court, and Plaintiffs' motion to remand was granted. The remand order has been appealed to the Ninth Circuit.
- *City of Oakland et al. v. BP P.L.C. et al.* – Filed September 2017 in CA state court against five oil companies and asserted only a public nuisance claim. The case was removed to federal court, and the court granted the oil companies' Motion to Dismiss. The case is currently on appeal in the Ninth Circuit.
- *City of New York v. BP P.L.C., et al.* – Filed January 2018 in S.D.N.Y. against five oil companies, alleging public nuisance, private nuisance, and trespass. The court granted the oil companies' Motion to Dismiss, and the case is currently on appeal in the Second Circuit.
- *Bd. of Cty. Comm'rs of Boulder County, et al. v. Suncor Energy (USA) Inc., et al.* – Filed April 2018 in Colorado state court against oil companies, asserting claims for nuisance, trespass, unjust enrichment, and violation of the consumer fraud act. The case was removed, and the motion to remand is pending.

CLIMATE CHANGE LITIGATION

- *King County v. BP P.L.C.* – Filed May 2018 in Washington state court against oil companies, alleging public nuisance and trespass and charges companies with producing, marketing, and selling fossil fuels despite their knowledge of the risks. The case was removed and is currently stayed.
- *State of Rhode Island v. Shell Oil Products Co, LLC et al.* – Filed July 2018 in state court against oil companies. Rhode Island is the first state to file a climate change lawsuit. Rhode Island asserted claims for public nuisance, failure to warn, design defect, and trespass, as well as claims for impairment of public trust resources. The case was removed, and the motion to remand is pending.
- *Mayor and City Council of Baltimore v. BP P.L.C., et al.* – Filed July 2018 in state court against oil companies, asserting claims including public nuisance, private nuisance, trespass, and a violation of the consumer protection act. The case was removed, and the motion to remand is pending.
- *Pacific Coast Federation of Fisherman v. Chevron Corp. et al.* – Filed November 2018 against oil companies for claims including nuisance and negligence. Plaintiff specifically notes the economic injuries caused by warming ocean waters on crab fishermen. The case was removed and is currently stayed pending decisions by the Ninth Circuit.

CLIMATE CHANGE LITIGATION – OUR CHILDREN’S TRUST CASES

- These are cases brought by groups of young plaintiffs, who are backed by the Our Children’s Trust organization, against states and their agencies.
- *Juliana v. United States* – Filed August 2015 in the district court in Oregon, asserting that the government caused climate change, and it has violated the youngest generation’s constitutional rights to life, liberty, and property, as well as failed to protect essential public trust resources. The case is currently stayed pending an appeal.
- *Sinnok, et al. v. State of Alaska, et al.* – Filed October 2017 in Alaska state court, alleging that Alaska violated plaintiffs’ constitutional rights by putting fossil fuel production above their safety. The state court granted Alaska’s Motion to Dismiss, and the case is currently on appeal.
- *Aji P., et al. v. State of Washington, et al.* – Filed February 2018 in Washington state court, alleging constitutional claims against the state, governor, and state agencies. The state court granted Washington’s Motion to Dismiss, and it was not appealed.
- *Reynolds, et al. v. State of Florida* – Complaint filed April 2018, alleging the state violated plaintiffs’ constitutional rights to life, liberty, property, and the pursuit of happiness, and caused harm to Florida’s essential public trust resources. Motion to Dismiss briefing is ongoing.

Common Shareholder Climate Requests

Climate Action 100+ and TCFD

COMMON SHAREHOLDER REQUESTS

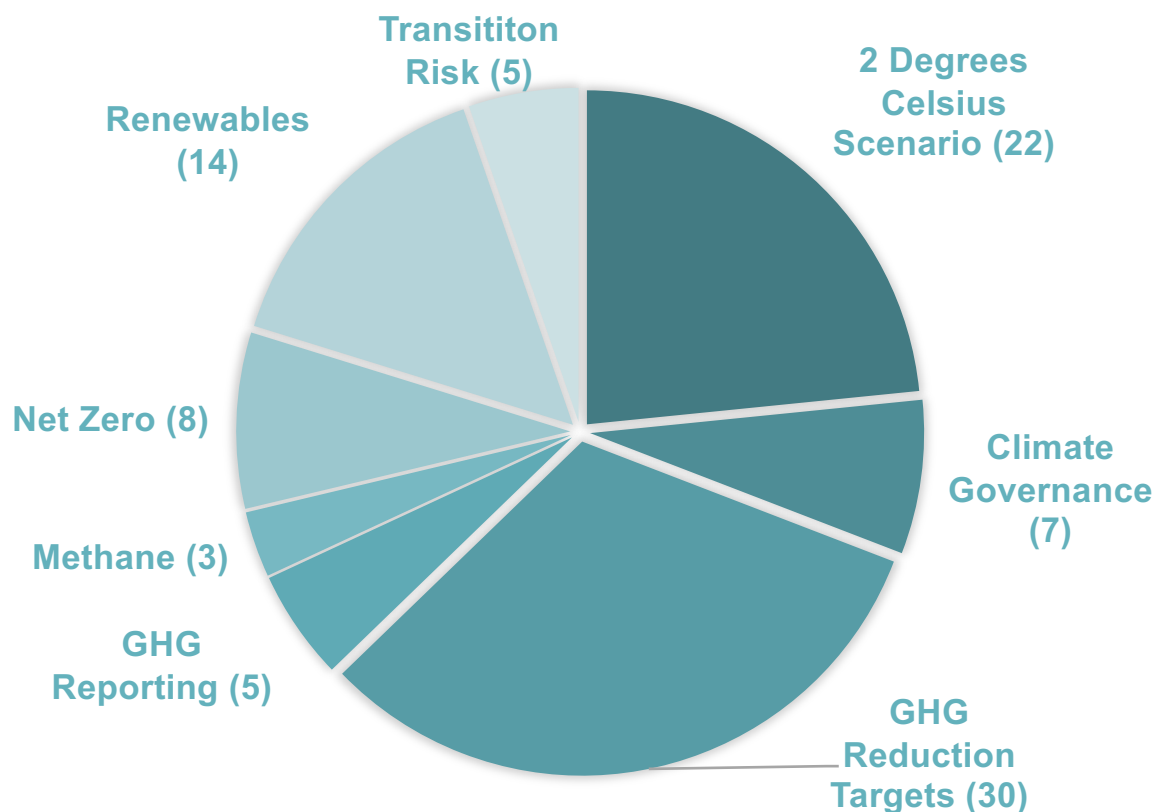
BASED ON PAST THREE YEARS OF SHAREHOLDER PROPOSAL DATA

- Impact of 2 Degree Celsius scenario
- Company policies and plans regarding GHG emissions, especially methane emissions
- Annual sustainability report (all of the major reporting regimes request climate-related information)
- Alignment of executive incentives with GHG emission reductions or other climate metrics
- Disclosure of public policy advocacy
- Disclosure of Company's due diligence process for environmental and social risks

COMMON SHAREHOLDER REQUESTS

2018 U.S. PROXY SEASON PROPOSALS

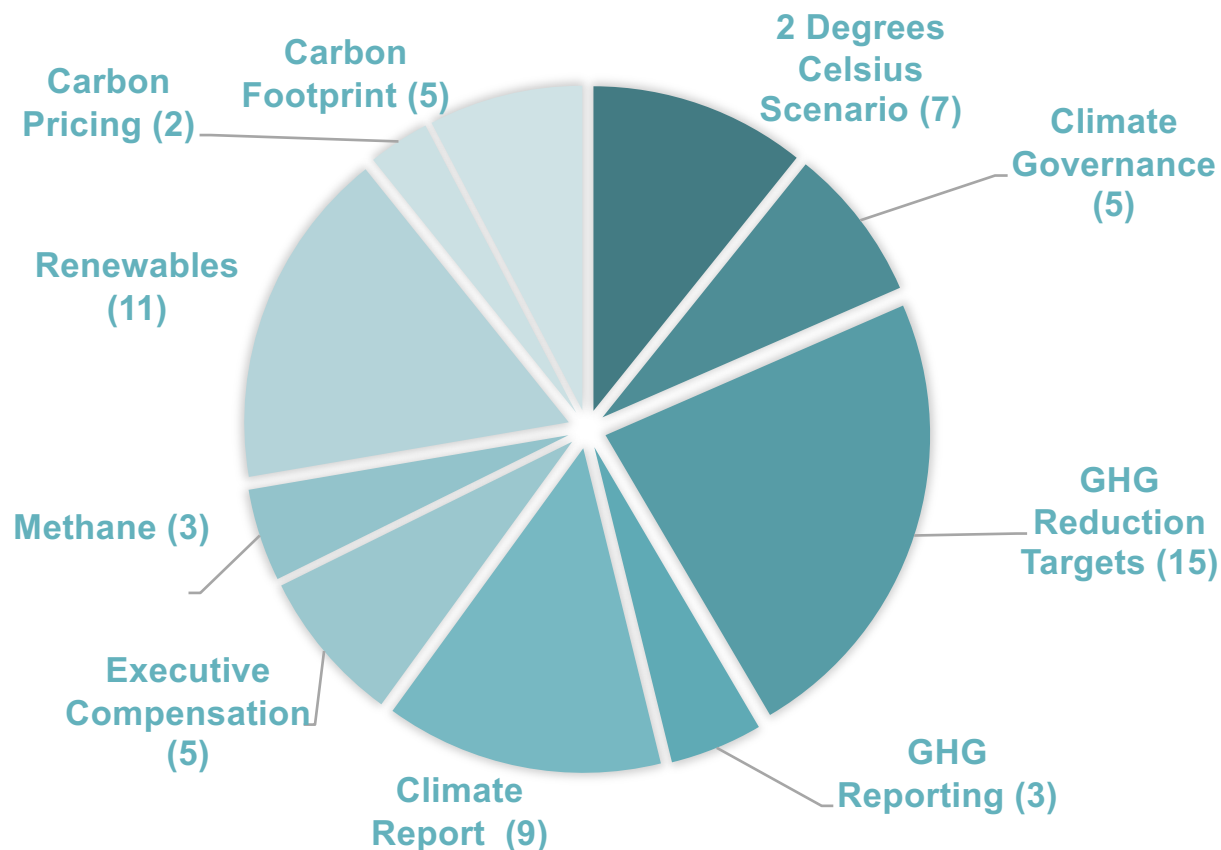
- 168 proposals on environmental/sustainability issues
 - 94 proposals on climate change or renewable energy



COMMON SHAREHOLDER REQUESTS

2019 U.S. PROXY SEASON PROPOSALS (TO DATE)

- 121 proposals on environmental/sustainability issues
 - 65 proposals on climate change or renewable energy



COMMON SHAREHOLDER REQUESTS ON CLIMATE

CLIMATE ACTION 100+

GLENCORE

Furthering our commitment to the transition to a low-carbon economy

Baar, Switzerland
20 February 2019

As one of the world's largest diversified resource companies, Glencore has a key role to play in enabling transition to a low carbon economy. We do this through our well-positioned portfolio that includes copper, cobalt, nickel, vanadium and zinc - commodities that underpin energy and mobility transformation. We believe this transition is a key part of the global response to the increasing risks posed by climate change.



Joint statement between institutional investors on behalf of Climate Action 100+ and Royal Dutch Shell plc (Shell)

Dec 3, 2018

This joint statement has been developed between Royal Dutch Shell plc (Shell) and a leadership group of institutional investors on behalf of the global investor initiative: Climate Action 100+ (CA 100+)¹. The investor engagement with Shell has been led by Robeco and the Church of England Pensions Board and included representatives of Eumedion (the Dutch platform for institutional investors) and the European Institutional Investors Group on Climate Change (IIGCC)². APG on behalf of ABP, the Environment Agency Pension Fund (EAPF) and the Universities Superannuation Scheme (USS) have also been active participants.

BP to support investor group's call for greater reporting around Paris goals

1 February 2019

- BP Board to support resolution from Climate Action 100+ investors at AGM
- Resolution calls for BP to describe how company strategy is consistent with Paris goals
- Builds on BP's commitment to growing shareholder value while advancing energy transition
- BP has also incorporated emissions reductions as a factor in employee reward



CLIMATE ACTION 100+ THREE REQUESTS

- Implement a strong governance framework which clearly articulates the board's accountability and oversight of climate change risks and opportunities;
- Take action to reduce greenhouse gas emissions across the value chain, consistent with the Paris Agreement's goal of limiting global average temperature increase to well below 2 degrees Celsius above pre-industrial level; and
- Provide enhanced corporate disclosure in line with the final recommendations of the TCFD.

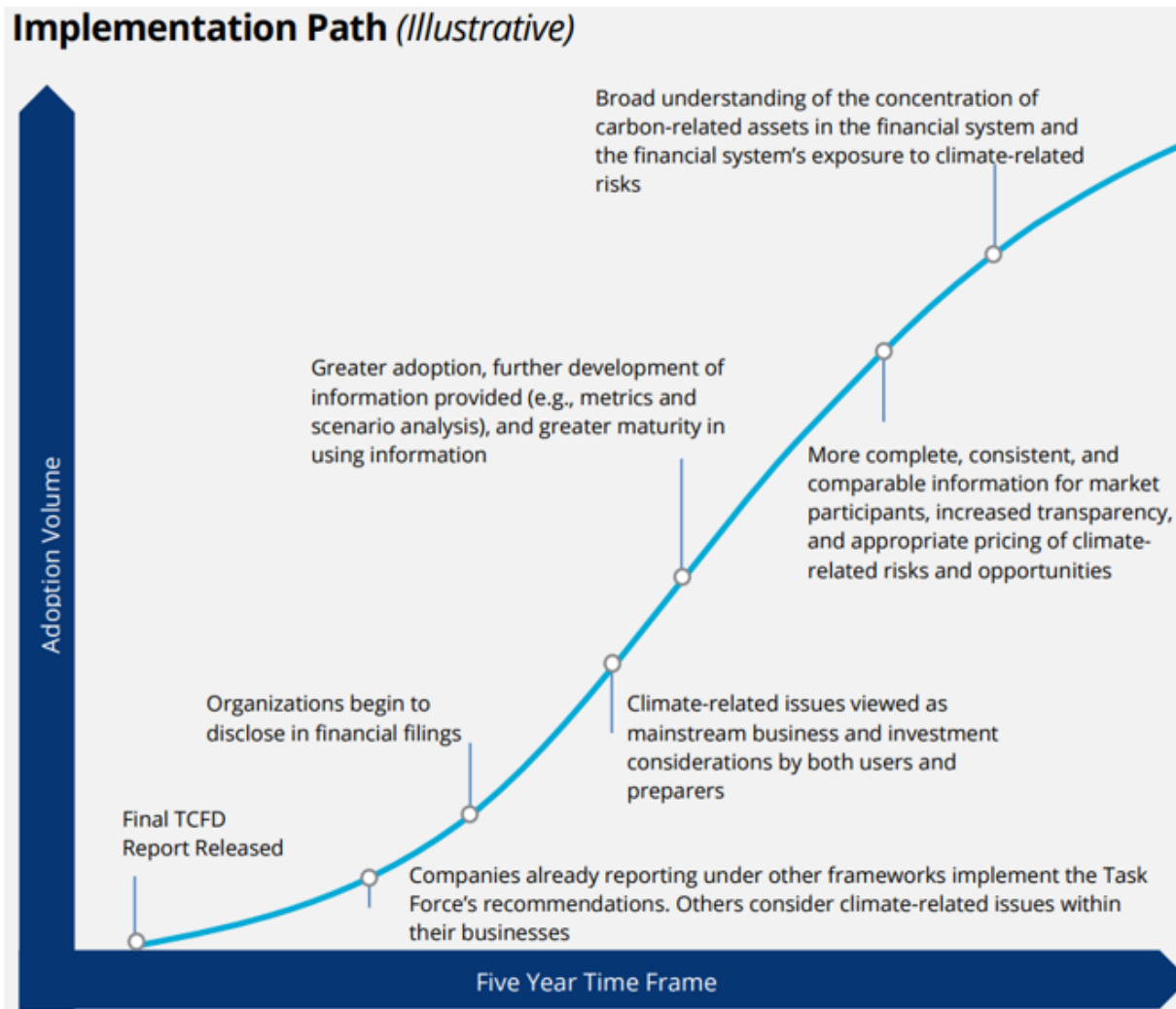
TCFD RECOMMENDATIONS

Core Elements of Recommended Climate-Related Financial Disclosures



TCFD

TASK FORCE EXPECTATIONS



CLIMATE SCENARIO ANALYSIS

- Currently available climate scenarios focus on the energy sector
- Available information on key assumptions and projections for existing scenarios is extensive but is generally limited to data relevant to energy companies' business
- Companies outside the energy sector may either have to wait for new scenarios or seek to develop their own
- The International Energy Agency (IEA) Sustainable Development Scenario (SDS) shows the existing tools for scenario analysis for the oil & gas and electricity generation industries

CLIMATE SCENARIO REPORTS

ExxonMobil

2018 Energy & Carbon Summary

Positioning for a Lower-Carbon Energy Future



climate change resilience

a framework for decision making

human energy™

Climate-Related Risks and Opportunities: Positioning for a Lower-Carbon

SHELL SCENARIOS

Sky

MEETING THE GOALS OF
THE PARIS AGREEMENT

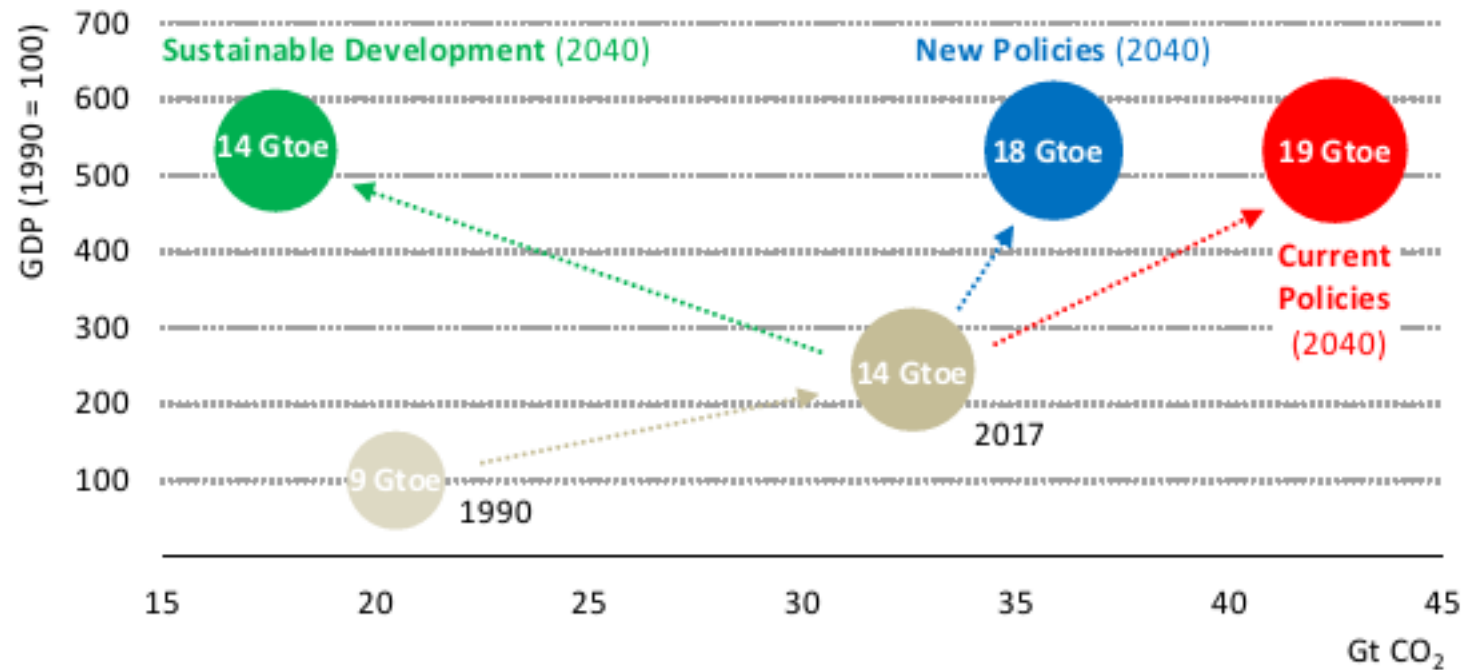


2050 2055 2060 2065 2070 2075 2080



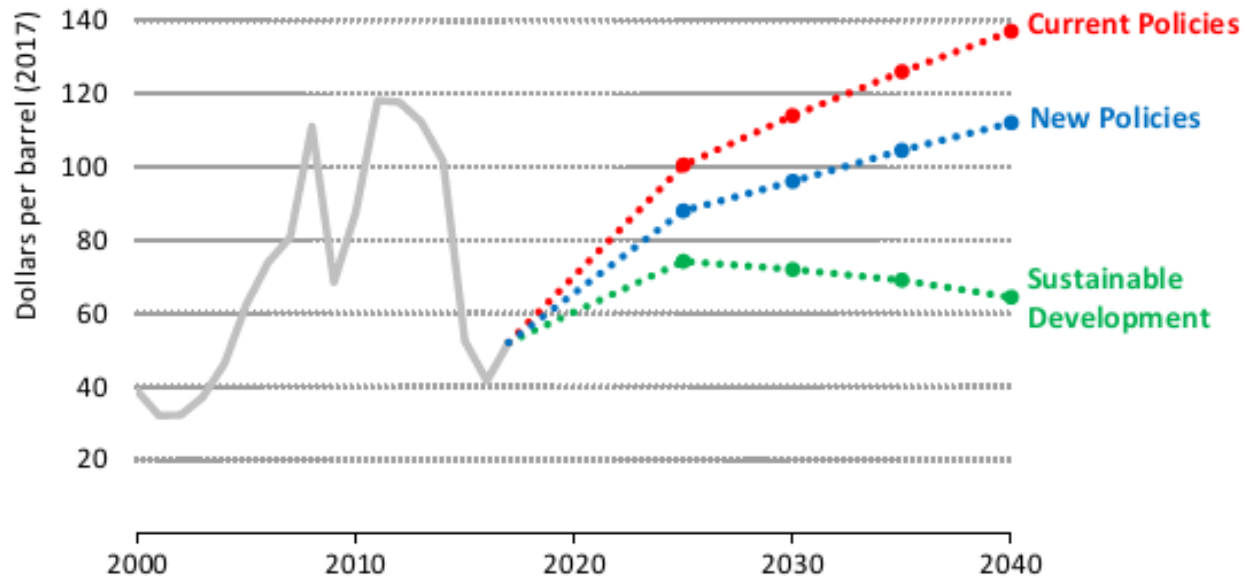
EXAMPLE SCENARIOS: IEA

Figure 1.2 ▶ World primary energy demand and energy-related CO₂ emissions by scenario



IEA SCENARIOS

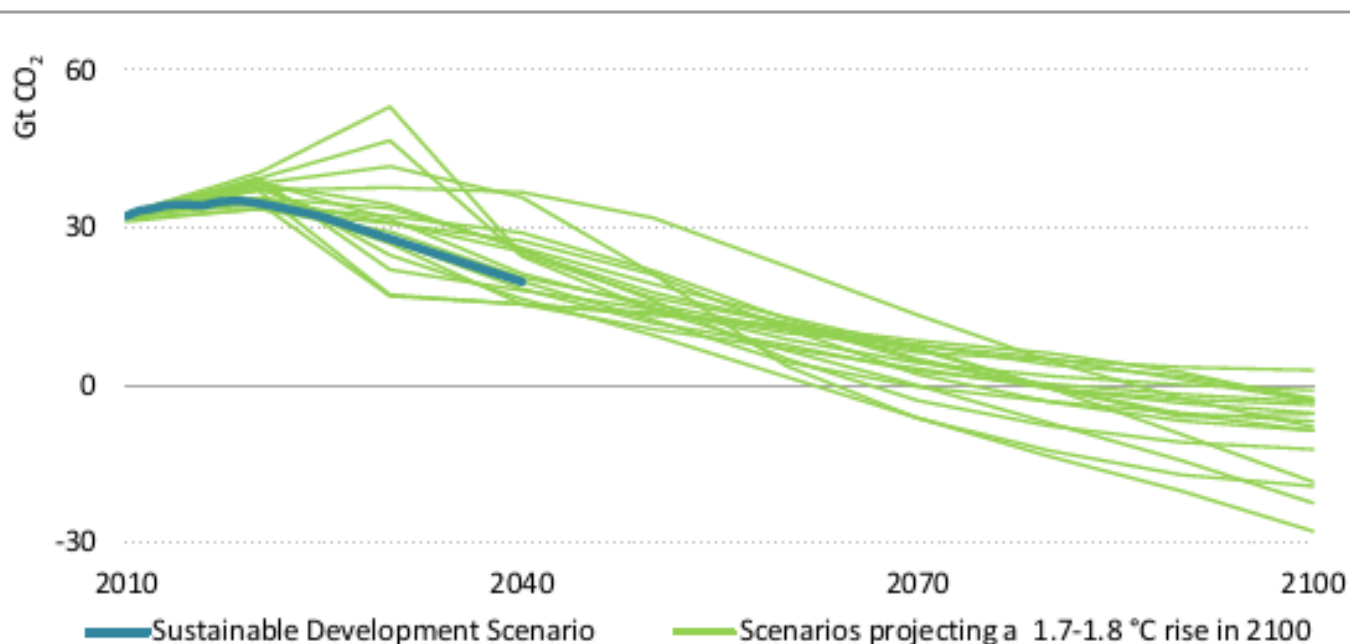
Figure B.1 ▶ Average IEA crude oil price by scenario



The oil price trajectory varies widely between scenarios, reflecting their different supply, demand and policy elements

IEA SDS SCENARIO

Figure 2.4 ▸ CO₂ emissions in the Sustainable Development Scenario and other “well below 2 °C” scenarios (1.7-1.8 °C)



The CO₂ emissions trajectory to 2040 in the Sustainable Development Scenario is at the lower end of a range of scenarios projecting a global temperature rise of 1.7-1.8 °C in 2100

State AG Investigations and Shareholder Suits

Risks of Climate Disclosure and Nondisclosure

PEOPLE OF THE STATE OF NEW YORK v. EXXONMOBIL

- After two-year investigation, NY AG filed complaint in October 2018 based on Martin Act
- Complaint alleged two theories of fraud: (1) overrepresenting proxy costs used for GHG emissions and (2) underrepresenting business risks from a two-degree scenario
- Complaint alleges misrepresentations not only in SEC filings but also in climate reports and other communications to the public
- Case is pending in NY state court



PEOPLE OF THE STATE OF MASSACHUSETTS v. EXXONMOBIL

- In March 2016, the Mass. AG issued to Exxon a subpoena-like request for documents
- The investigation and document request are based on allegations that the company (1) violated state consumer protection laws by underrepresenting the impacts on climate change from its products and (2) underrepresented potential climate change-related risks to shareholders
- Exxon's collateral challenges to the document request were denied in 2018 and early 2019
- The investigation is ongoing



PEOPLE OF THE STATE OF NEW YORK v. PEABODY ENERGY

- In 2015, NY AG investigated Peabody in connection with Martin Act
- NY AG alleged that Peabody (1) underrepresented risk to coal from climate change, (2) overrepresented coal pricing projections from IEA scenario, and (3) underrepresented its ability to assess climate risk
- Peabody relied only on one of the IEA scenarios and did not disclose two less-favorable for coal scenarios
- NY AG and Peabody settled, and Peabody agreed to provide more fulsome climate disclosures, including less favorable IEA scenarios if it relies on IEA projections



WASHINGTON D.C. AG ANNOUNCEMENT

- On March 15, 2019, the Washington D.C. AG tweeted that the AG's office is "seeking outside legal counsel to support [its] climate change work"
- The following description is provided on the D.C. AG's website:

The Office of the Attorney General (OAG) for the District of Columbia ("District") is seeking a Contractor for legal services in support of OAG's investigation and potential litigation against ExxonMobil Corporation (Exxon), and/or any other subsidiary, affiliate or successor-in-interest responsible for potential violations of the Consumer Protection Procedures Act (CPPA) or other District laws in connection with Exxon's statements or omissions about the effects of its fossil fuel products on climate change



EXXONMOBIL – FREE SPEECH CASES

- There are a number of cases involving Exxon with arguments regarding Exxon's speech on climate change and whether that speech is protected by the First Amendment.
- *Exxon Mobil Corp. v. Healy* – Filed June 2016 by Exxon, arguing that investigations into its climate-related disclosures violated its First Amendment Rights. The S.D.N.Y. dismissed the case, and it is currently on appeal.
- *Ramirez v. Exxon Mobil Corp., et al.* – Filed November 2016 by Exxon investors, alleging a securities fraud class action accusing the company of concealing its climate change knowledge. The N.D. Tex. denied Exxon's Motion to Dismiss, and class certification briefing is ongoing.
- Exxon's Rule 202 Petition for Pre-Suit Deposition – Filed January 2018, seeking depositions of representatives of CA cities and municipalities regarding a "conspiracy" where special interest groups and politicians are abusing law enforcement authority to impose their viewpoint on climate change. The state court found it had personal jurisdiction, and that decision is currently on appeal.

CLIMATE-RELATED LITIGATION AND CREDIT RISK

WILDFIRES IN CALIFORNIA

- PG&E currently facing lawsuits for property damage resulting from 2017 wildfires in Northern California
 - Loss of over \$13 billion in market cap
 - Suspension of dividends

All CA utilities are currently facing credit downgrades/negative outlooks due to wildfire risk



Source: <https://s.hdnux.com/photos/66/46/72/14315147/3/1024x1024.jpg>



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Climate Governance Strategies

BEST PRACTICES

- An effective response to climate change requests requires strong governance at the outset and close coordination across internal team members
- It is a best practices to have an internal body charged with oversight of climate change risks and opportunities:
 - Assesses climate risks and opportunities
 - Stays informed about developments in climate science as well as company strategies
 - Duties should be outlined in governance documents
 - Either a Board subcommittee or reports to the Board

BEST PRACTICES

- Develop internal policies to ensure that the outcome of any engagement meets shareholder expectations within a company's broader strategy to evaluate and mitigate climate risks
- Policies should cover:
 - Fielding shareholder requests on climate
 - Reporting to the company's climate committee
 - Comprehensively responding to climate requests
- Understanding the reasonableness of the scope of requests at the outset of engagement can go a long way in ensuring companies' interests are protected in both the short- and long-term