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Complaint requesting an investigation into apparent greenwashing by Shell plc

Introduction and Summary

Global Witness writes to share its concern that Shell plc (“Shell”) has filed potentially misleading statements with the SEC, and to ask you to investigate this and bring appropriate enforcement action.¹ In particular, we are concerned that Shell has materially misstated its financial commitment to renewable sources of energy by inflating the content of its new “Renewables and Energy Solutions” (“RES”) reporting segment with fossil fuel activities.² Such misstatements would have the effect of exaggerating the extent to which Shell is reducing its dependence upon fossil fuels and investing instead in renewable energy sources that international and national energy authorities agree are necessary to ensure the rise in global temperature remains within 1.5C or 2C above pre-industrial levels.

Despite its title, a significant portion of Shell’s spending on Renewables and Energy Solutions appears to be directed towards the marketing and trading of “natural” gas – a fossil fuel³ – and gas-generated power. **Given that gas is neither renewable nor an energy solution,⁴ we ask the Commission, first, to investigate whether the activities included in the RES segment have been properly reported pursuant to relevant accounting standards.**

According to Shell’s most recent annual report, the company directed 12% of its capital expenditure to Renewables and Energy Solutions in 2021.⁵ However, according to Global Witness analysis of figures reported by Shell, as detailed below, the company spent just 1.5% total capex on developing renewable sources of energy such as wind and solar.⁶ **We therefore ask the Commission, second, to examine whether including gas in RES without reporting how much spending Shell directs to gas has caused Shell to omit material facts necessary to its investors’ clear understanding of Shell’s purported energy**

¹ Global Witness is an international non-governmental organization and a Shell shareholder. See appendix for a list of Shell disclosures containing potentially misleading statements.

² See Shell’s announcement of its new reporting segments: Shell, Press Release: Shell Accelerates Drive for Net-Zero Emissions With Customer-First Strategy (Feb. 11, 2021), <https://www.shell.com/media/news-and-media-releases/2021/shell-accelerates-drive-for-net-zero-emissions-with-customer-first-strategy.html>.

³ Intergovernmental Panel on Climate Change (IPCC), Special Report: Renewable Energy Sources and Climate Change Mitigation at 33 (2012), https://www.ipcc.ch/site/assets/uploads/2018/03/SRREN_Full_Report-1.pdf. An IPCC meta study that conducted Life Cycle Assessments (LCAs) for different sources of energy found that median lifecycle emissions were 469g CO₂e for gas, 12g CO₂e for wind (1.7% that of gas), and 46g and 22g for each of two different methods of solar (9.8% and 4.7% that of gas, respectively). *Id.* at 982.

⁴ See *infra* Section 1.a.

⁵ Shell, Annual Report and Accounts 2021 at 40, 49, see *infra* Section 1.c.

⁶ Shell, Annual Report and Accounts 2021 at 304; see *infra* Section 1.c.

transition. In addition, we ask the Commission to further examine whether Shell’s reported capex on RES may include so much gas spending that labelling the segment “Renewables and Energy Solutions” constitutes a materially misleading misstatement.

Shell’s launch of the RES segment complements its claims that it is “accelerating the transition to low- and zero-carbon energy, which is at the heart of [its] strategy.”⁷ The company’s investor reports convey support for – and alignment with – internationally accepted climate change goals.⁸ However, Shell’s spending across its entire business portfolio indicates that the company is not reducing its dependence upon the extraction and exploitation of greenhouse gas-intensive fossil fuels at a fast enough rate to substantiate these claims and this rhetoric.⁹ Instead, Shell’s decarbonization pathways rely on a dramatic expansion of unproven energy “solutions” in an attempt to prolong the company’s production of harmful fossil fuels.¹⁰

There is growing recognition that “climate-related factors and risks . . . can affect a company’s bottom line and its future, and therefore an investor’s decision to buy, hold or sell a security or how to vote a proxy.”¹¹ Commission Chair Gary Gensler has observed that “increasingly,” as threats posed by climate change become more immediate, visible, and extreme, “investors are making investment decisions based upon factors that include the risks and opportunities related to climate.”¹² As an energy company whose portfolio is overwhelmingly made up of fossil fuel investments, Shell is especially exposed to climate-related risks.¹³ It is therefore essential that Shell shareholders have access to “full, fair, and truthful disclosures” on Shell’s investments and trajectory so they can “decide which risks to take.”¹⁴

As set forth below, we ask that the SEC examine whether Shell is adequately disclosing its renewable energy investments in accordance with Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful to issue materially misleading statements or omissions in connection with the purchase or sale of any security.¹⁵ If the Commission finds that Shell is misstating or omitting material facts in its financial filings, we ask that the Commission issue appropriate enforcement action to ensure that Shell’s investors have access to the clear and comprehensive information they rely upon to inform their investment decisions.

⁷ Shell, Notice of 2022 AGM and Shell’s Energy Transition Progress Report (Apr. 20, 2022), <https://www.globenewswire.com/news-release/2022/04/20/2425200/0/en/Notice-of-2022-AGM-and-Shell-s-Energy-Transition-Progress-Report.html>.

⁸ “Shell supports the most ambitious goal of the Paris Agreement, which is to limit the rise in global average temperature this century to 1.5 degrees Celsius above pre-industrial levels. . . . Powering Progress is our strategy to accelerate the transition of our business to net-zero emissions, in step with society’s progress towards the goal of the Paris Agreement on climate change.” Shell, Annual Report and Accounts 2021 at 12 (2022).

⁹ See *infra* Section 2.a.

¹⁰ See *infra* Section 2.b.

¹¹ U.S. Securities & Exchange Commission, Chair Gary Gensler, Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC (Sept. 15, 2022), <https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522>.

¹² *Id.*

¹³ “Rising concerns about climate change and effects of the energy transition could continue to lead to a fall in demand and potentially lower prices for fossil fuels. Climate change could also have a physical impact on our assets and supply chains. . . . If we fail to stay in step with the pace and extent of society’s changing demands for energy as it transitions to a low-carbon future, we could fail in sustaining and developing our business.” Shell, Second Quarter 2022 and Half Year Unaudited Results at 29 (July 27, 2022) (“Principal Risks and Uncertainties”).

¹⁴ Gensler, Sept. 15, 2022 Senate Testimony, *supra* note 11.

¹⁵ Shell, Energy Transition Strategy 2021 at 2; 17 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

1. Shell may be misleading investors regarding the extent of its investments in renewable energy sources by lumping together renewable and fossil fuel activities in its “Renewables and Energy Solutions” reporting segment.

Beginning in 2022, Shell changed the way that it reported its investments by segment. “Renewables and Energy Solutions” (“RES”) which had formerly been reported under Shell’s “Integrated Gas” segment, became a standalone category.¹⁶ The changes were announced in the spring of 2021, just before Shell put its “Energy Transition Strategy,” a shareholder resolution setting forth Shell’s approach to climate change, to a vote.¹⁷ Shell executives have explained to investors that the reorganization aligned with the company’s efforts to “improve transparency” and “become a major provider of renewable and low-carbon energy.”¹⁸ Global Witness is concerned that, on the contrary, combining renewable and gas investments in one segment is confusing and a potential violation of the relevant accounting standards, and may obscure the limited role for renewables in Shell’s portfolio.

- a. Shell’s Renewables and Energy Solutions reporting segment is mislabeled because it includes fossil fuel-related activities that are neither renewable nor energy solutions.

Renewables and Energy Solutions appears to include a number of gas-related activities. Shell has described the content of RES as follows: “Integrated Power – customer solutions, marketing and trading of power, renewable electricity generation; Gas Marketing and Trading – supply of natural gas to utility, industrial and retail customers; Hydrogen – production and supply of decarbonized hydrogen; Nature & Environmental Solutions – trading of carbon credits and investment in nature-based products that avoid or reduce carbon; Carbon Capture & Storage – developing commercial CCS hubs.”¹⁹

Gas, which bears no relation to renewables or energy solutions, plays a role in nearly all of these components, from “gas marketing and trading” – i.e., Shell’s business of buying pipeline gas and selling it to customers, to “integrated power.”²⁰ A substantial portion of the power Shell delivers to its customers as part of its “Integrated Power” activities appears to be gas-generated. Global Climate Insights (GCI), an Australasian non-profit that conducts company-level analysis for investors, estimates that renewable electricity generated by Shell made up just 3% of the power Shell delivered in 2020, and

¹⁶ Shell’s other reporting segments include Upstream, Integrated Gas, Chemicals and Products, Marketing, and Corporate. Shell, Fourth Quarter 2021 Results Presentation at 32 (Feb. 3, 2022). For definitions of each, see Shell, Second Quarter 2022 and Half Year Unaudited Results at 3-6, 8-9.

¹⁷ Shell, Press Release: Shell Accelerates Drive for Net-Zero Emissions With Customer-First Strategy, *supra* note 2; Shell, Press Release: Shell Presents Energy Transition Strategy Publication to Shareholders for Advisory Vote (Apr. 15, 2021), <https://www.shell.com/media/news-and-media-releases/2021/shell-presents-energy-transition-strategy-publication-to-shareholders-for-advisory-vote.html>.

¹⁸ Shell, Enhanced Disclosures – New Reporting Segments (May 3, 2022), <https://www.shell.com/investors/investor-presentations/2022-investor-presentations/new-reporting-segments.html>; Shell, Annual Reports and Accounts 2021 at 161.

¹⁹ Shell, Fourth Quarter 2021 Results Presentation at 32. Different investor reports reveal slight discrepancies in how RES is defined. RES “includes Shell’s Integrated Power activities, comprising electricity generation, marketing, trading and optimization of power and pipeline gas, and digitally enabled customer solutions. The segment also includes production and marketing of hydrogen, development of commercial carbon capture & storage hubs, trading of carbon credits and investment in nature-based projects that avoid or reduce carbon.” Shell, Second Quarter 2022 and Half Year Unaudited Results at 8. “Our activities in [RES] are as follows: Our integrated power value-chain including the marketing and trading of gas and power. Shell’s production and marketing of decarbonized hydrogen. The development of commercial Carbon Capture and Storage hubs. And our investments in nature-based projects that avoid or reduce carbon as well as the marketing of carbon credits.” Shell, Enhanced Disclosures – New Reporting Segments, *supra* note 18.

²⁰ Gas is also central to Shell’s hydrogen and carbon capture & storage (CCS) activities. See *infra* Section 2.b.

4% in 2021.²¹ By contrast, electricity from gas produced by Shell made up 62% of sales in 2020 and 30% in 2021, with the remainder made up of third-party sales.²²

Gas is not a renewable source of energy. International and U.S. domestic authorities agree that renewable energy is “derived from natural sources that are replenished at a higher rate than they are consumed.”²³ By contrast, gas, like oil and coal, is a non-renewable fossil fuel hydrocarbon that forms underground over millions of years. According to the Intergovernmental Panel on Climate Change (IPCC), burning gas is the third most carbon-intensive commercially available method of generating electricity.²⁴ In 2021, combusting gas for energy made up a third of total U.S. energy-related carbon emissions,²⁵ and was responsible for over a fifth of global carbon emissions from fossil fuels.²⁶ These figures do not include emissions from releasing methane, the primary component of natural gas, which has between 84 and 87 times the warming power of CO₂ over a 20 year timespan.²⁷

Nor can gas reasonably be considered an “energy solution.” The world must phase out its dependence upon fossil fuels including gas to avoid disastrous climate collapse. The leading intergovernmental organization on energy issues, the International Energy Agency (IEA), has stated that “there are no new oil and gas fields approved for development” beyond those already committed to by 2021, in its net-zero by 2050 scenario.²⁸ The International Institute for Sustainable Development (IISD) too has identified “a large consensus across multiple modelled climate and energy pathways” that “developing any new oil and gas fields is incompatible with limiting warming to 1.5°C,” such that “global oil and gas production must decrease by at least 65% by 2050” for the world to have a 50% chance of keeping warming below

²¹ Global Climate Insights (GCI), Update: Shell Emissions Forecast at 11 (Sept. 1, 2022), https://www.accr.org.au/downloads/2022_09_gci_shell_forecast_update.pdf.

²² *Id.* GCI assumed an efficiency factor of 40% to translate Shell’s equity share of renewable generation capacity as reported in its Q2 2022 results (1.1 gigawatt (GW)) into terawatt hours (TWh), the metric Shell uses to report the power it delivers. Shell, Second Quarter and Half Year Unaudited Results at 8. These figures do not include renewable energy traded as part of Shell’s third-party sales, which Shell does not report and which GCI and Global Witness were unable to generate.

²³ United Nations, Climate Action: What Is Renewable Energy?, <https://www.un.org/en/climatechange/what-is-renewable-energy>; see also Intergovernmental Panel on Climate Change (IPCC), Renewable Energy Sources and Climate Change Mitigation, Chapter 1: Renewable Energy and Climate Change at 178 (2011), <https://www.ipcc.ch/report/renewable-energy-sources-and-climate-change-mitigation/>; U.S. Energy Information Administration, What Is Renewable Energy? (June 10, 2022), <https://www.eia.gov/energyexplained/renewable-sources/>.

²⁴ Steffen Schlömer et al., Annex III: Technology-Specific Cost and Performance Parameters at 1335, *in* Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_annex-iii.pdf. About 117 pounds of CO₂ are produced per million British thermal units (MMBtu) equivalent of natural gas compared with more than 200 pounds of CO₂ per MMBtu of coal and more than 160 pounds per MMBtu of distillate fuel oil. U.S. Energy Information Administration (EIA), Natural Gas and the Environment, <https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php>.

²⁵ EIA, Natural Gas and the Environment, *supra* note 24.

²⁶ Pierre Friedlingstein et al., Global Carbon Budget 2022, 14 *Earth Syst. Sci. Data* 4811, 4826-27 (Nov. 11, 2022), <https://essd.copernicus.org/articles/14/4811/2022/essd-14-4811-2022.pdf>. Fossil fuels accounted for around 90% of global CO₂ emissions in 2021. *Id.* at 4826-29; Pierre Friedlingstein & Zeke Hausfather, Carbon Brief, Analysis: Global CO₂ emissions from fossil fuels hit record high in 2022 (Nov. 11, 2022), <https://www.carbonbrief.org/analysis-global-co2-emissions-from-fossil-fuels-hit-record-high-in-2022/>.

²⁷ International Energy Agency (IEA), Methane Tracker 2021: Methane and Climate Change (2021), <https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change>. “[T]he fossil gas industry leaks methane at almost every step in the supply chain.” Global Witness, Why Natural Gas is Dangerous for the Climate (Mar. 4, 2021), <https://www.globalwitness.org/en/campaigns/fossil-gas/why-natural-gas-is-dangerous-for-the-climate/>.

²⁸ International Energy Agency (IEA), Net Zero By 2050: A Roadmap for the Global Energy Sector (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

1.5C.²⁹ Even Shell admits that “[t]he world will need less oil and gas as it moves to a low- and zero-carbon energy system.”³⁰ Far from a “solution,” gas is part of the problem.

Regulatory agencies elsewhere increasingly recognize that gas is not clean, low-carbon, environmentally friendly, or a durable solution to climate change. In 2019, the UK’s Advertising Standards Authority (ASA) instructed Equinor to permanently retire an advertisement implying that gas is a source of “low-carbon energy.”³¹ In 2017, the Dutch Advertising Code Authority prohibited Statoil from calling gas a “clean energy” and “low emissions fuel,” and separately censured Shell and Exxon for claiming that gas was “the cleanest of all fossil fuels.”³² The agency explained that the latter term “suggested that fossil fuels can be clean in that they do not cause environmental damage. . . . that suggestion is not correct.”³³ In a feat of semantic maneuvering, on a company web page entitled “Clean Energy Solutions,” Shell now calls gas the “cleanest burning hydrocarbon.”³⁴

In the U.S., too, several states and dozens of municipalities have banned natural gas hookups in new buildings to reduce greenhouse gas emissions, improve air quality, and save customers money.³⁵

Even allowing for a limited role for gas in the necessary transition to a renewable energy future, Shell’s inclusion of gas-related activities in its Renewables and Energy Solutions segment seems likely to confuse rather than inform investors. Shell’s “Integrated Gas” segment (which is part of Shell’s “transition” pillar) includes the “exploration and extraction” of “natural” gas, as well as “the operation of the upstream and midstream infrastructure necessary to deliver gas . . . to market.”³⁶ Shell’s “Upstream” reporting segment (which forms its own pillar) also includes “exploration and extraction of . . . natural gas,” and “also markets and transports . . . gas, and operates the infrastructure necessary to deliver [it] to the market.”³⁷ Clearly there is the potential for confusion arising out of areas of apparent

²⁹ International Institute for Sustainable Development (IISD), Navigating Energy Transitions: Mapping the Road to 1.5C at 14 (Oct. 2022), <https://www.iisd.org/system/files/2022-10/navigating-energy-transitions-mapping-road-to-1.5.pdf>.

³⁰ Shell, Energy Transition Progress Report 2021 at 18.

³¹ Murray Worthy, Global Witness, Blog: Oil Company Forced to Backtrack on Claims Gas is Low Carbon (Sept. 12, 2019), <https://www.globalwitness.org/en/blog/oil-company-forced-backtrack-claims-gas-low-carbon/>. The ASA also banned ExxonMobil from claiming that gas is “one of the world’s cleanest fuels” in 2008, and the UK’s scientific body on climate change, the Committee on Climate Change, has repeatedly drawn distinctions between gas and “low-carbon” heating. Emma Goring, Gas is ‘Not a Low-Carbon Fuel,’ UK Watchdog Rules, Climate Markets & Investment Association (Sept. 23, 2019), <https://www.cmia.net/news/gas-is-not-a-low-carbon-fuel-uk-watchdog-rules/>; Climate Change Committee, Cleaning Up the UK’s Heating Systems: New Insights on Low-Carbon Heat (Sept. 10, 2018), <https://www.theccc.org.uk/2018/09/10/cleaning-up-the-uks-heating-systems-new-insights-on-low-carbon-heat/>.

³² Arthur Neslen, Shell and Exxon Face Censure Over Claim Gas Was ‘Cleanest Fossil Fuel,’ Guardian (Aug. 14, 2017), <https://www.theguardian.com/environment/2017/aug/14/shell-and-exxon-face-censure-over-claim-gas-was-cleanest-fossil-fuel>.

³³ *Id.*

³⁴ Shell, Clean Energy Solutions, <https://www.shell.com/business-customers/trading-and-supply/trading/shell-energy-europe/clean-energy-solutions.html>.

³⁵ California Public Utilities Commission (CPUC), Press Release: CPUC Decision Makes California First State in Country to Eliminate Natural Gas Subsidies (Sept. 15, 2022), <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-decision-makes-ca-first-state-in-country-to-eliminate-natural-gas-subsidies>; Saul Ewing LLP, Maryland Senate Proposes Bill to Foreclose New Fossil Fuel Hookups Starting in 2023, JD Supra (Feb. 10, 2022), <https://www.jdsupra.com/legalnews/maryland-senate-proposes-bill-to-3601728/>; Emma Newburger, New York City Is Banning Natural Gas Hookups for New Buildings to Fight Climate Change, CNBC (Dec. 15, 2021), <https://www.cnbc.com/2021/12/15/new-york-city-is-banning-natural-gas-hookups-for-new-buildings.html>; Mark Silberg, Fossil Gas Has No Future in Low-Carbon Buildings, RMI (Jan. 6, 2020), <https://rmi.org/fossil-gas-has-no-future-in-low-carbon-buildings/>.

³⁶ Shell, Second Quarter 2022 and Half Year Unaudited Results at 3.

³⁷ *Id.* at 4.

overlap in these definitions. What is more, gas-related activities are thus divided between and reported separately across all three of Shell’s strategic pillars – “Upstream,” “Transition,” and “Growth.”³⁸ This design may obscure the large and growing role that gas plays in Shell’s portfolio.³⁹

Finally, comparison of Shell’s reporting segments with those of other leading oil and gas companies suggests that Shell’s are especially misleading. BP, for instance, has three reporting segments: “gas & low carbon energy”; “oil production & operations”; and “customers & products.”⁴⁰ Unlike Shell, BP does not spread gas-related activities across different reporting segments, or try to paint gas as “renewable” or an “energy solution.” BP’s gas business includes “upstream activities that predominantly produce natural gas, integrated gas and power, *and gas and power trading*” (emphasis added).⁴¹ BP’s low carbon business “includes solar, . . . wind, hydrogen and CCS” as well as bioenergy.⁴² Unlike Shell, therefore, BP clearly distinguishes between “gas” and “low carbon energy,” including by reporting its capital expenditure on “gas” and “low carbon energy” separately.⁴³ Likewise, neither ExxonMobil nor Chevron attempt to report gas as part of their “renewable,” “low carbon,” or “solutions” spend.⁴⁴ Shell’s attempt to greenwash its gas businesses as “renewable” thus makes it an outlier among its peers.

b. Shell’s reporting segments may not accord with relevant accounting standards

The combination of renewable and gas-related activities in Renewables and Energy Solution calls into question whether the segment complies with the International Financial Reporting Standards (“IFRS”), which instruct entities to organize their reporting segments to enable users to see an entity “through the eyes of management.”⁴⁵ We believe there are facts that suggest that RES does not meet the IFRS definition of a reporting segment, in that Shell leadership appears to review and make operational decisions about the activities within RES at a more granular level than reported.⁴⁶ We believe RES may also be inconsistent with the alternative IFRS rule regarding aggregation, which in this context requires that the activities to be aggregated in a single segment share “similar economic characteristics” and a majority of listed criteria: “(a) the nature of the products and services; (b) the nature of the production

³⁸ Shell’s reorganization of its reporting segments created three strategic pillars: “Upstream”; “Transition,” which includes “Integrated Gas” as well as “Chemicals and Products”; and “Growth,” referring to “Renewables and Energy Solutions” as well as “Marketing.” Shell, Fourth Quarter 2021 Results Presentation at 32. For definitions of each segment, see Shell, Second Quarter 2022 and Half Year Unaudited Results at 3-8.

³⁹ Shell aims to grow its fossil gas business to over 55% of its total hydrocarbon production by 2030. Shell, Energy Transition Strategy 2021 at 15, 20.

⁴⁰ BP, Annual Report and Form 20-F 2021 at 3, <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2021.pdf>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 41. In 2021, BP’s gas capex was \$3.18 billion, while its low carbon energy capex was \$1.56 billion. *Id.*

⁴⁴ ExxonMobil, 2022 Investor Day Presentation at 71 (Mar. 3, 2022), <https://corporate.exxonmobil.com/-/media/global/files/investor-relations/analyst-meetings/2022-exxonmobil-investor-day.pdf?la=en&hash=17D4E4BE16E3034975AC05E00DA0F8E8DAC9CFA3>. Chevron, 2021 Supplement to the Annual Report at 1 (2022), <https://www.chevron.com/-/media/shared-media/documents/2021-chevron-annual-report-supplement.pdf>.

⁴⁵ Peter Kajuter & Martin Nienhaus, Oxford Business Law Blog, Segment Reporting Through the Eyes of Management (May 8, 2017), <https://blogs.law.ox.ac.uk/business-law-blog/blog/2017/05/segment-reporting-through-eyes-management>. A reporting segment is defined as a “component” of an entity (a) “that engages in business activities from which it may earn revenues and incur expenses . . .”; (b) “whose operating results are reviewed regularly by the entity’s chief operating decision maker [CODM] to make decisions about resources to be allocated to the segment and assess its performance”; and (c) “for which discrete financial information is available.” IFRS 8.5.

⁴⁶ If activities within RES meet the definition of a reporting segment themselves, then Shell may be required to issue financial statements specific to these sub-components. See IFRS 8.5, 8.11.

processes; (c) the type or class of customer for their products and services; (d) the methods used to distribute their products or provide their services; and (e) if applicable, the nature of the regulatory environment.”⁴⁷ We ask that the Commission investigate both whether RES is properly defined as a reporting segment under IFRS and whether it accords with the prescribed IFRS aggregation criteria.

There are two reasons we believe that RES might not satisfy the definition of a reportable segment under IFRS. First, Shell has access to, and makes public, some of the “discrete financial information” for renewables-only activities within RES.⁴⁸ In Shell’s publicly available disclosures pursuant to the EU Taxonomy, the company reports capex, opex, and turnover for its wind, solar, and renewable infrastructure investments, without including gas.⁴⁹ With respect to gas too, media reports suggest that Shell has more discrete financial information regarding these activities than it has shared with investors: for example, Reuters obtained inside information that Shell’s LNG trading division recorded a loss of nearly \$1 billion in the third quarter of 2022, offering “rare insight into [Shell’s] trading operations.”⁵⁰

Second, Shell’s management structure suggests that Shell’s segments may be reported to its investors differently than how its activities are managed at the executive level. Shell claims that its new reporting segments reflect its overall business strategy, and that its disclosures echo those “used by the [CEO]” – the apparent “chief operating decision maker” (“CODM”)⁵¹ – “for the purposes of making decisions about allocating resources and assessing performance.”⁵² However, since early 2022, management of the RES segment is divided between an executive with exclusive responsibility for renewable generation, Thomas Brostrom, and Steve Hill, whose portfolio is dominated by gas and trading activities, including liquefied natural gas (LNG) trading activities whose finances are reported in Shell’s Integrated Gas Segment.⁵³ To determine whether RES meets the definition of a reporting segment, the Commission should look into how regularly the CODM of RES interacts with these executives and the level of detail at which the CODM reviews the businesses they oversee.⁵⁴

⁴⁷ The aggregation criteria are listed in IFRS 8.12. IFRS 8.14 makes these criteria applicable when the activities to be aggregated do not on their own meet the quantitative thresholds – i.e. they constitute at least 10% of total revenue, 10% of profits or losses, or 10% of combined assets – that would require them to be separately reported. This is likely the case here.

⁴⁸ IFRS 8.5.c. The SEC has interpreted the definition of a reporting segment as laid out in Accounting Standards Codification Topic 280 on Segment Reporting (“ASC 280”), which is part of the Generally Accepted Accounting Principles (GAAP) and mirrors the IFRS 8 definition of a reporting segment in the relevant ways. To constitute “discrete financial information” under ASC 280, “a business component need only have a measure of profit or loss available and gross profit is sufficient for this purpose.” See Powersecure Int., Inc., Exchange Act Release No. 79256 (Nov. 7, 2016), <https://www.sec.gov/litigation/admin/2016/34-79256.pdf> (rejecting the argument that the criterion had not been met because “certain operating expenses were not allocated amongst its business units with precision below gross profit”).

⁴⁹ Shell, Annual Report and Accounts 2021 at 304; *see infra* Section 1.c.

⁵⁰ Ron Buosso, Marwa Rashad & Dmitry Zhdannikov, Exclusive: Shell’s Flagship LNG Trading Made Nearly \$1 billion Loss in Q3, Reuters (Nov. 3, 2022), <https://www.reuters.com/business/energy/exclusive-shells-flagship-lng-trading-made-nearly-1-billion-loss-q3-sources-2022-11-03/>.

⁵¹ “The term ‘chief operating decision maker’ identifies a function, not necessarily a manager with a specific title. That function is to allocate resources to and assess the performance of the operating segments of an entity.” IFRS 8.7.

⁵² Shell, Second Quarter and Half Year Unaudited Results at 14; IFRS 8.5.b.

⁵³ Hill’s portfolio also includes power and carbon trading, hydrogen, carbon capture, and environmental products. Energy Voice, Shell Shakes Up Renewables Unit After Departure of Top Executive Elizabeth Brinton (Jan. 25, 2022), <https://www.energyvoice.com/renewables-energy-transition/382644/shell-renewables-elizabeth-brinton/>.

⁵⁴ *Powersecure Int.*, Exchange Act Release No. 79256 (Nov. 7, 2016). In finding that PowerSecure’s reporting segment was overinclusive under ASC 280, the SEC rejected the argument that “its CODM – who was determined to be the [CEO] – did not regularly review operating results below the consolidated level to make decisions about resource allocations and to assess performance” because the CEO regularly “received financial results that reflected a measure of profitability on a more

As an alternative, the Commission should investigate whether Shell properly aggregated the different components of RES, in that they share “similar economic characteristics” and a majority of aggregation criteria. RES includes both the trading and marketing of gas and power and electricity generation. The former is part of Shell’s trading division, which is well-established and central to its business strategy, while the latter is a recent addition to the company’s portfolio with most projects in early and pre-FID stages.⁵⁵ Much of the electricity Shell generates is used to power its own facilities, while its gas and power trading is focused on buying and selling between third parties.⁵⁶ Thus RES encompasses different products (i.e. pipeline gas and renewable electricity), different production processes (i.e. generation and trading), and different customers (i.e. third parties, including utility, industrial, and retail customers, and itself) who receive Shell products through different methods of distribution.⁵⁷

Global Witness believes that the questions raised above call for an investigation into whether Shell’s approach to segmental reporting accords with the accounting requirement to enable users of its financial statements to view the entity “through the eyes of management.”⁵⁸ We urge the Commission to ask Shell to explain its reasoning behind presenting the activities in RES as a single segment. Even if the Commission determines that Shell’s segment reporting is not inconsistent with IFRS accounting standards, these standards provide that smaller components of an entity’s business may still be “considered reportable, and separately disclosed, if management believes that information about the segment would be useful to users of the financial statements.”⁵⁹ We believe that disaggregated financial information about Shell’s investment in renewables would be highly useful to its investors and other users of its financial statements.

c. These deficiencies have the effect of obscuring the fact that investments in truly renewable energy are likely a vanishingly small part of Shell’s business portfolio

Shell and Shell executives have emphasized to investors that turning RES into a standalone reporting segment has “increase[ed] the transparency and granularity of our financial reporting” and “will make it easier for you to model the value of these growing businesses.”⁶⁰ However, Shell’s “Renewables and Energy Solutions” are a collection of fundamentally different businesses. Financial disclosures at a more disaggregated level are essential to a clear understanding of the businesses within the segment and the role each plays in Shell’s business portfolio. Yet a Global Witness review of Shell’s disclosures on its investments in each activity, as detailed below, found this information to be scattered and incomplete, where it is available at all, obscuring the marginal role renewable energy plays in Shell’s business portfolio. The Commission should examine whether, by including gas activities in the segment without specifying how much it has spent on them, Shell has omitted material facts necessary to make RES not

disaggregated level than the consolidated entity” and “met with each business unit leader to discuss operational issues, sales forecasts, and financial performance,” and some “business unit leaders had business unit level budgets and forecasts.” *Id.*

⁵⁵ A 2021 Reuters article identified Shell as “already the world’s leading energy trader” with its oil trading activities meeting 13% of global demand before the COVID-19 pandemic. Ron Buosso, Shell Targets Power Trading and Hydrogen in Climate Drive, Reuters (Jan. 31, 2021), <https://www.reuters.com/article/us-shell-strategy-insight-idUSKBN2A10ZZ>. Announcing its 2022 AGM, Shell stated it had “4.7 gigawatts (GW) of renewable generation capacity in operation, under construction and/or committed for sale [with] a further 38 GW . . . in our pipeline of future projects.” Shell, Notice of 2022 AGM, *supra* note 7.

⁵⁶ Shell, About Shell Trading, <https://www.shell.com/business-customers/trading-and-supply/trading/about-shell-trading.html>; see *infra* Section 2.c.

⁵⁷ Gas is also regulated differently than renewable electricity.

⁵⁸ Kajuter & Nienhaus, *supra* note 45 and accompanying text.

⁵⁹ IFRS 8.13.

⁶⁰ Shell, Enhanced Disclosures – New Reporting Segments, *supra* note 18. “[T]hese growing businesses” refers to RES and Marketing, the two segments Shell counts towards its “Growth” pillar. *Id.*

misleading, as required under Rule 10b-5. The Commission should further examine whether Shell's negligible spending on renewable energy as compared with its spending on gas renders the label "Renewables and Energy Solutions" itself a materially misleading misstatement.

Shell reports its spending on RES as a whole. In 2021, Shell's reported capital expenditure (capex) on RES was \$2.4 billion, out of a total capex of \$19.7 billion,⁶¹ and in the first three quarters of 2022, Shell spent \$2.4 billion on RES out of a total of \$17.5 billion.⁶² Thus Shell put around 12% of its 2021 capex into RES, and 13.7% in the first three quarters of 2022. By comparison, Shell's reported capex on Upstream and Integrated Gas – segments concerned exclusively with fossil fuel activities – was \$12.0 billion in 2021⁶³ and \$9.0 billion in the first three quarters of 2022,⁶⁴ around 61.1% and 51.6% of total capex respectively.

Investors, the media, and members of Congress have looked to these figures, with some misreading the \$2-3 billion a year Shell has pledged to RES as an investment purely in renewable or "clean" energy sources.⁶⁵ For instance, an article published in the New York Times after Shell announced its new reporting segments stated that the company "intended to invest \$2 billion to \$3 billion a year in renewable energy like wind and solar as well as clean power facilities."⁶⁶ Given this confusion, there is a substantial likelihood that investors who are concerned about climate could be misled by Shell's disclosures into believing that Shell is doing far more to invest in renewable energy and transition away from fossil fuels like gas than is really the case.

It is unclear what portion of Shell's capex is in real renewable energy because Shell fails to disclose how spending is distributed within the segment. Instead, Shell uses decontextualized and irreconcilable "growth measures" to report on selected aspects of the segment.⁶⁷ For instance, Shell reports how many terawatt hours of power it has delivered alongside how many gigawatts of total renewable power generation capacity it has in operation and under construction.⁶⁸ The use of these different metrics – operating and constructing gigawatts of power versus delivering terawatt hours – makes it challenging for investors to compare and analyze these figures. Without knowing how much of that capacity has been in operation, and for how long, it is difficult to determine what proportion of the power Shell delivered was generated by renewable energy sources.⁶⁹

Global Witness review of Shell disclosures filed with the Commission and other regulators uncovered a single instance where Shell has offered information about its investment in truly renewable energy. Shell did so pursuant to the recently enacted EU Taxonomy Regulation, which requires companies to

⁶¹ Shell, Annual Report and Accounts 2021 at 40, 49.

⁶² Shell, Third Quarter 2022 Unaudited Results at 27 (Oct. 27, 2022).

⁶³ Shell, Annual Report and Accounts 2021 at 40.

⁶⁴ Shell, Third Quarter 2022 Unaudited Results at 27.

⁶⁵ In a hearing held by the U.S. House Committee on Oversight and Reform, Rep. Katie Porter cited Shell's investment of \$2-3 billion dollars in Renewables and Energy Solutions as reported in accusing Shell executive Gretchen Watkins of "greenwashing." Taylor Telford, Break-Up Calls and Congressional Hearings: Big Oil Faces Growing Pressure to Change, Washington Post (Oct. 29, 2021), <https://www.washingtonpost.com/business/2021/10/29/third-point-shell-big-oil/>. See also Casey Merriman, Upstream, Low Carbon Grab Majors' Capex Hike, Energy Intel (Feb. 22, 2022), <https://www.energyintel.com/0000017f-1e42-df96-a1ff-bf6e40b40000/>; Tom Espiner, Shell: Europe's Biggest Oil Firm Sets Out Carbon Neutral Plans, BBC (Feb. 11, 2021), <https://www.bbc.com/news/business-56022908>.

⁶⁶ Stanley Reed, Shell, in a Turning Point, Says Its Oil Production Has Peaked, NYTimes (Feb. 11, 2021), <https://www.nytimes.com/2021/02/11/business/shell-oil-production.html>.

⁶⁷ Shell, Third Quarter 2022 Unaudited Results at 9.

⁶⁸ *Id.* at 9-10.

⁶⁹ See *supra* notes 21, 22 and accompanying text.

issue financial disclosures on activities it classifies as “environmentally sustainable” with the aim of standardizing corporate sustainability reporting.⁷⁰ In its 2021 Annual Report, Shell disclosed capital expenditure of \$288 million allocated to a combination of “electricity generation using solar voltaic energy,” “electricity generation from wind power,” and “installation, maintenance & repair of renewable energy technologies.”⁷¹ If we take this figure to reflect Shell’s capex on wind, solar, and renewable energy technologies, then Shell’s spending on renewable energy production amounts to just 1.5% of its total 2021 capex, far less than the 12% capex share Shell reports for RES as a whole.

Shell complains that its disclosures under the taxonomy, including for wind and solar, do not “provide a complete picture of [its] low-carbon activities” because they exclude activities such as trading, joint ventures, and spending on early-stage businesses.⁷² If Shell wants to provide investors with a more “complete picture,” Shell could elsewhere in its reports disclose what it considers to be a fair accounting of its spending on these activities – i.e., by including capex on trading renewable-generated electricity, which Global Witness was unable to estimate⁷³ – rather than burying them en masse in RES.

Shell claims that the new reporting segments “will make it easier for [investors] to model the value of these growing businesses.”⁷⁴ But without access to clear and disaggregated disclosures, investors will have a hard time assessing the “value” of Shell’s various businesses and activities.⁷⁵ Indeed, the confusing and incomplete information Shell provides may deprive investors of the ability to interrogate the claim that these businesses are “growing.”⁷⁶ Given the above, we ask the Commission to investigate whether the absence of gas-specific financial disclosures within Renewables and Energy Solutions and the mismatch between the segment’s content and its name has caused Shell to misstate or omit material facts necessary to make the segment not misleading.

2. Shell does not appear to be transitioning to a clean energy business model.

Global Witness believes that labeling certain gas activities as “Renewables and Energy Solutions” may have enabled Shell to exaggerate the extent to which its portfolio reflects an “ambition to become a major provider of renewable and low-carbon energy services.”⁷⁷ Other aspects of Shell’s business plans support this conclusion: instead of “accelerating the transition to low- and zero-carbon energy,”⁷⁸ Shell is still investing primarily in fossil fuels. Rather than transition its business model, Shell has chosen to greenwash continuing oil and gas development by making unsubstantiated claims about its ability to capture and offset emissions, and using renewable energy it generates to power fossil fuel activities.

⁷⁰ European Commission, EU Taxonomy for Sustainable Activities, https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en.

⁷¹ Shell, Annual Report and Accounts 2021 at 304.

⁷² *Id.* at 302-304.

⁷³ See *supra* notes 21, 22 and accompanying text.

⁷⁴ Shell, Enhanced Disclosures – New Reporting Segments, *supra* note 18.

⁷⁵ A 2022 study confirms that “[n]o major releases annual investment amounts for clean energy in a consistently transparent format that enables year-to-year tracking.” Mei Li, Gregory Trencher & Jusen Asuka, The Clean Energy Claims of BP, Chevron, ExxonMobil and Shell: A Mismatch Between Discourse, Actions and Investments at 13, 17 PLoS ONE 2 (2022). <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>.

⁷⁶ In support of this claim, the 2022 study found “no evidence to suggest any major has entered the renewables market at a scale that would indicate a shift away from fossil fuels.” *Id.* at 18, 17.

⁷⁷ Shell, Enhanced Disclosures – New Reporting Segments, *supra* note 18.

⁷⁸ Shell, Notice of 2022 AGM, *supra* note 7.

Despite the continuing centrality of fossil fuels to Shell's business, a recent peer-reviewed academic study of the annual reports of Shell and other oil and gas majors identified "a strong increase in discourse related to 'climate,' 'low-carbon,' and 'transition,'" in recent years.⁷⁹ This trend was particularly pronounced for Shell, and keywords related to these terms appeared more frequently in Shell's reports than in those of BP, Exxon, and Chevron.⁸⁰ Shell also leads the pack in having the least Paris-aligned investments of the world's top twenty oil and gas producers: a December 2022 analysis by Carbon Tracker found that Shell's investments are not even compatible with a catastrophic 2.5C warming.⁸¹ "Until actions and investment behavior are brought into alignment with discourse," the authors of the academic study write, "accusations of greenwashing appear well-founded."⁸² This conclusion is supported by the following Global Witness examination of Shell's ongoing reliance on fossil fuels, its promotion of unproven "energy solutions," and the uses to which it is putting its limited renewables investments.

a. Shell remains heavily invested in fossil fuels

Shell's claims that it is transitioning and transforming its business are belied by its enduring commitment to fossil fuels, in at least three respects.

First, Shell's current and projected production plans overwhelmingly favor fossil fuel production. In contrast to its projected spending of \$2-3 billion per year on Renewables and Energy Solutions from 2022-2030⁸³ – putting aside the potentially misleading nature of this figure as outlined above – Shell is projected by industry analysts Rystad Energy to invest an average of \$12 billion per year into upstream oil and gas extraction in the same period.⁸⁴ Shell's transition strategy explicitly envisions the continued production of oil and gas through 2050,⁸⁵ and its published pathway appears to maintain a significant role for fossil fuels in 2100.⁸⁶ Shell claims that it will offset the emissions from these activities through carbon credits and carbon capture and storage technology, as discussed in the next section.

Shell has also made potentially misleading claims about reducing its reliance on fossil fuels, for instance announcing that its oil production peaked in 2019 and is expected to decline by 1-2% per year through 2030.⁸⁷ A decrease of 1-2% per year is in fact less than the natural production decline of existing fields, which is around 5% per year.⁸⁸ Even as Shell claims to be reducing its oil production, it is planning to

⁷⁹ Li et al., *supra* note 75 at 1, 17.

⁸⁰ While Exxon reports used more of these terms than Shell in 2016 and 2019, its results were impacted by the differing style of its reports. *Id.* at 8-9.

⁸¹ Thom Allen & Mike Coffin, Carbon Tracker, Paris Misaligned: Why Investors Should Assess the Climate Alignment of Oil & Gas Companies at 9 (Dec. 2022), <https://carbontracker.org/wp-content/uploads/2022/12/Paris-Misaligned.pdf>.

⁸² Li et al., *supra* note 75 at 1, 17.

⁸³ Shell, Shell Strategy Day 2021, Presentation Transcript at 11 (Feb. 11, 2021), https://www.shell.com/investors/investor-presentations/2021-investor-presentations/strategy-day-2021/_jcr_content/root/main/section/simple/text.multi.stream/1663680478589/d8774e4b76e9f2548e829ca135e32be338142e72/strategy-day-2021-presentation-transcript.pdf.

⁸⁴ Oil Change International & Milieudefensie, Shell's Fossil Fuel Production: Still Pushing the World Towards Climate Chaos at 16 (Sept. 30, 2022), <https://priceofoil.org/2022/09/30/shell-fossil-fuel-production-climate-chaos/>.

⁸⁵ *Id.* at 13.

⁸⁶ Client Earth, The Greenwashing Files: Shell, <https://www.clientearth.org/projects/the-greenwashing-files/shell/>.

⁸⁷ Shell, Press Release: Shell Accelerates Drive for Net-Zero Emissions with Customer-First Strategy, *supra* note 2; Shell, Energy Transition Progress Report 2021 at 18.

⁸⁸ "A natural decline in production happens in oil and gas reservoirs at a rate of around 5% a year across the oil and gas industry. It takes constant reinvestment to sustain production and extract resources. Our planned capital investment of \$8 billion in our Upstream business in the near term is well below the investment level required to offset the natural decline . . . of

grow its gas business by more than 20% over the next few years,⁸⁹ leading to significant additional emissions.⁹⁰

Third, Shell has claimed that it does “not anticipate any new frontier exploration entries after 2025.”⁹¹ However, according to the authors of the peer-reviewed study referenced above, “this target seems to have incited the company to accelerate its exploration program before the ‘deadline.’”⁹² Of 1300 upstream assets owned in whole or in part by Shell, 756 are undeveloped,⁹³ and Shell’s 2021 Annual Report highlights new exploration activities in nine countries.⁹⁴ Far from transitioning, Shell “is actively pursuing new frontiers” and “has no plans to stop exploration in areas where it already has significant production assets,” according to Oil Change International.⁹⁵

b. Shell’s “energy solutions” allow Shell to greenwash continuing oil and gas development Renewables and Energy Solutions includes hydrogen and so-called “solutions” such as carbon capture and storage (CCS) and “nature-based solutions,” which refers primarily to carbon offsets.⁹⁶ Describing these unproven technologies as “solutions” has the potential to mislead investors concerning Shell’s climate impacts. Global Witness and other climate organizations view promotion of these “false solutions” by oil and gas companies as an attempt to prolong the life of fossil fuel industries.⁹⁷ Investments in these areas have consistently underperformed expectations and will not be able to capture or “offset” anywhere near the amount of emissions that Shell is currently on track to produce.⁹⁸

our oil and gas reservoirs, and will not sustain current levels of production. As a result . . . we expect a gradual decline of about 1-2% a year in total oil production through to 2030, including divestments.” Shell, Energy Transition Strategy 2021 at 23.

⁸⁹ Jillian Ambrose, Shell to Expand Gas Business Despite Pledge to Speed Up Net Zero Carbon Drive, Guardian (Feb. 22, 2021), <https://www.theguardian.com/business/2021/feb/11/shell-grow-gas-business-energy-net-zero-carbon>. In its 2021 Energy Transition Progress Report, Shell stated that it was “adding around” 7 million tonnes per annum of new LNG production capacity expected to be on stream in the mid-2020s. Shell, Energy Transition Progress Report 2021 at 18. Elsewhere, Shell has stated that it “expect[s] the percentage of total gas production in our portfolio to gradually rise to 55% or more by 2030.” Shell, Sustainability Report 2020, Our Approach, <https://reports.shell.com/sustainability-report/2020/achieving-net-zero-emissions/our-climate-target/our-approach.html>.

⁹⁰ Per OCI, if Shell’s oil production declines by an annual average of 1% between 2019-30, and gas is 55% of production volumes in 2030, Shell’s total O&G production in 2030 could increase by 2% compared to 2019. A 2% average annual decline would result in total O&G production decreasing by only 9% in 2030 relative to 2019. Oil Change International & Milieudefensie, *supra* note 84 at 13.

⁹¹ Shell, Energy Transition Progress Report 2021 at 18.

⁹² Li et al., *supra* note 75 at 14, 17.

⁹³ Oil Change International & Milieudefensie, *supra* note 84 at 11.

⁹⁴ Shell, Annual Report and Accounts 2021 at 60; Shell, Shell Insights: Upstream Strategy at 11 (May 25, 2021), <https://www.shell.com/investors/investor-presentations/2021-investor-presentations/shell-insights-upstream-strategy.html>.

⁹⁵ Oil Change International & Milieudefensie, *supra* note 84 at 9.

⁹⁶ Shell, Nature-Based Solutions, <https://www.shell.com/energy-and-innovation/new-energies/nature-based-solutions.html>; Shell, Energy Transition Strategy at 12. Shell has made similar statements about CCS and offsets: “At Shell, we believe that CCS will be essential for helping society to achieve net-zero emissions.” Shell, Carbon Capture and Storage, <https://www.shell.com/energy-and-innovation/carbon-capture-and-storage.html#iframe=L3dIYmFwcHMvQ0NTX0dsb2JlLw>; “If it is not possible to either avoid or reduce emissions, we will turn to the compensation of emissions, such as using carbon credits.” *Id.*

⁹⁷ In 2021, Global Witness joined over 500 organizations urging U.S. and Canadian policymakers to recognize CCS as a “false solution.” Center for International Environmental Law: Over 500 Organizations Call on Policymakers to Reject Carbon Capture and Storage as a False Solution (July 19, 2021), <https://www.ciel.org/organizations-demand-policymakers-reject-carbon-capture-and-storage/>; Andy Rowell, Oil Change International, False Solutions: To Achieve Net Zero, Carbon Offsetting Would Use Up All Global Farmland (Aug. 3, 2021), <https://priceofoil.org/2021/08/03/false-solutions-to-achieve-net-zero-carbon-offsetting-would-use-up-all-global-farmland/>.

⁹⁸ Adam Vaughan, Most Major Carbon Capture and Storage Projects Haven’t Met Targets, New Scientist (Sept. 1, 2022), <https://www.newscientist.com/article/2336018-most-major-carbon-capture-and-storage-projects-havent-met-targets/>;

Nevertheless, Shell’s decarbonization pathways rely on a dramatic scaling up of these activities.⁹⁹ Global Witness is concerned that Shell’s purported reliance on unproven technologies will allow it to continue investing in oil and gas while making unsubstantiated claims about its ability to capture and offset the greenhouse gases oil and gas projects produce.

In particular, Shell is a big booster of hydrogen, which it insists “has a critical role to play in helping the world reach net zero emissions.”¹⁰⁰ Shell refers repeatedly to “decarbonized” or “clean” hydrogen, by which it means both “green” hydrogen, which is produced by sending a renewable-generated electric current through water, and “blue” hydrogen, which is produced by mixing gas with steam, with some of the resulting carbon emissions captured and stored underground.¹⁰¹ Shell claims that “[b]lue hydrogen produces little to no greenhouse gas emissions.”¹⁰² This is deceptive. A fully functional CCS system could, in theory, capture most of the carbon emitted by *producing* hydrogen, but would not do anything about the greenhouse gases emitted from powering the plant, or as the gas feedstock moves through the supply chain or if hydrogen is released.

Moreover, Shell’s own experiences in the hydrogen sphere contradict any proclaimed expectation that CCS can fully capture emissions at the point of production. Shell has just one large operational investment in this area, the Quest project in Alberta, which produces blue hydrogen.¹⁰³ Shell touts Quest as “a thriving example of how carbon capture and storage is working; showing it can make a significant contribution to lowering CO₂ emissions.”¹⁰⁴ However, a 2022 analysis by Global Witness found that Quest’s CCS system captured just 48% of the plant’s CO₂ emissions, and just 39% of overall greenhouse gas emissions.¹⁰⁵ This means that the plant emits more than it captures – resulting in a climate footprint equivalent to that of 1.2 million UK petrol-powered cars¹⁰⁶

Despite the serious concerns Quest raises about the efficacy of CCS, Shell claims that it will “seek to have access to 25 mtpa of CCS capacity by 2035 – equal to 25 CCS facilities the size of [Quest], or around 20% of the capacity of all CCS projects being studied around the world today.”¹⁰⁷ Shell has also announced an aim to offer its customers the opportunity to remove 120 million tons of CO₂ per year by 2030 through

Institute for Energy Economics and Financial Analysis (IEEFA), Carbon Capture: A Decarbonization Pipe Dream (Sept. 1, 2022), <https://ieefa.org/articles/carbon-capture-decarbonisation-pipe-dream>; Josh Gabbatiss, Shell Says New ‘Brazil-Sized’ Forest Would Be Needed to Meet 1.5C Climate Goal, CarbonBrief (Feb. 12, 2021), <https://www.carbonbrief.org/analysis-shell-says-new-brazil-sized-forest-would-be-needed-to-meet-1-5c-climate-goal/>.

⁹⁹ IEEFA, Carbon Capture: A Decarbonization Pipe Dream, *supra* note 98; Gabbatiss, Shell Says New ‘Brazil-Sized’ Forest Would Be Needed to Meet 1.5C Climate Goal, *supra* note 98.

¹⁰⁰ Shell, Hydrogen, <https://www.shell.com/energy-and-innovation/new-energies/hydrogen.html>. Hydrogen is not an energy source, like solar or wind power, but should be thought of as an energy vector, more akin to batteries or synthetic fuels.

¹⁰¹ See Shell, Fourth Quarter 2021 Results Presentation at 8, 32; Shell, Energy Transition Strategy 2021 at 18. Global Witness, The Problem with Hydrogen (Sept. 1, 2022), <https://www.globalwitness.org/en/blog/problem-hydrogen/>. 98% of all hydrogen is produced by mixing gas and steam, a process that releases around eleven tons of CO₂ per ton of hydrogen. *Id.* Global Witness was unable to find a comparable breakdown of hydrogen produced by Shell.

¹⁰² Devin Shaw & Laurent Thomas, Shell, Q&A: Will CO₂ Capture Help Canada Mobilise a Clean Hydrogen Economy? (Jan. 28, 2021), <https://www.shell.com/business-customers/catalysts-technologies/resources-library/will-co2-capture-help-canada-mobilise-a-clean-hydrogen-economy.html>.

¹⁰³ Shell, Carbon Capture and Storage: Shell’s CCS Projects, <https://www.shell.com/energy-and-innovation/carbon-capture-and-storage.html>; Shell, Sustainability Report 2021 at 31.

¹⁰⁴ Global Witness, Hydrogen’s Hidden Emissions: Shell’s Misleading Climate Claims for its Canadian Fossil Hydrogen Project at 4 (Jan. 2022), <https://www.globalwitness.org/en/campaigns/fossil-gas/shell-hydrogen-true-emissions/>.

¹⁰⁵ *Id.* The overall greenhouse gas emissions calculation includes supply chain emissions such as methane.

¹⁰⁶ Global Witness, Hydrogen’s Hidden Emissions, *supra* note 104 at 8.

¹⁰⁷ Shell, Energy Transition Strategy 2021 at 16.

offsets,¹⁰⁸ and declared that achieving the goals of the Paris agreement “could mean” reforesting an area anywhere from half the size of Spain to the size of Brazil.¹⁰⁹

Even if these were realistic goals, Shell’s emissions “far outweigh” the CO₂ it says it aims to capture and offset. Shell’s “scope 3” emissions – i.e. those that result from burning the fossil fuels the company extracts – from its energy products alone added up to 1,299 million tons of CO₂e in 2021, over 10 times more than the amount of emissions that Shell declares it plans to offset per year.¹¹⁰ For all these reasons, neither blue hydrogen nor CCS nor offsets can meaningfully be described as “energy solutions,” and it is misleading to include them under that label.

c. Even some of Shell’s renewables investments are being used to sustain oil and gas production

Even Shell’s limited investments in renewable energy have not been used to facilitate a transition away from oil and gas but rather to power Shell’s continued oil and gas activities. Shell’s promotion of these investments may lead investors to believe, contrary to fact, that Shell is preparing to replace its fossil fuel investments with large-scale sustainable alternatives.

For example, through its CrossWinds joint venture, Shell won a tender for a planned wind farm off the coast of the Netherlands.¹¹¹ Shell has touted this project to investors as “one of the renewable energy projects that a lower carbon future will require,”¹¹² and stated that the wind farm would produce “enough renewable power to supply more than 1 million Dutch households with green electricity.”¹¹³ In reality, rather than providing renewable energy to customers at scale, Shell will use at least a quarter of the wind power generated by this project to supply a “renewable hydrogen” plant, which will in turn supply energy to a fossil fuel product refinery.¹¹⁴ Two of Shell’s largest and most widely promoted investments in wind power and green hydrogen will therefore be used to power and maintain its production of emissions-intensive fossil fuel products including petrol, diesel, and jet fuel.¹¹⁵ As such,

¹⁰⁸ *Id.* at 16.

¹⁰⁹ *Id.* at 6; Shell, Sky Scenario at 7 (2018).

¹¹⁰ Shell, Annual Report and Accounts 2021 at 89; *see also* Client Earth, The Greenwashing Files: Shell, <https://www.clientearth.org/projects/the-greenwashing-files/shell/>.

¹¹¹ Shell, Press Release: CrossWind Wins Tender for Hollandse Kust (Noord) Wind Farm (July 26, 2020), <https://www.shell.com/media/news-and-media-releases/2020/crosswind-wins-tender-for-hollandse-kust-noord-wind-farm.html/>.

¹¹² “Strong progress has also been made on renewables, with a funnel of installed renewable capacity and pipeline of options well ahead of what was expected in 2019 . . . Demonstrable progress was made on converting those options into the renewable energy projects that a lower-carbon energy future will require, for example with the CrossWinds joint venture in the Netherlands.” Shell, Annual Report and Accounts 2021 at 176.

¹¹³ Shell, Press Release: CrossWind Wins Tender for Hollandse Kust (Noord) Wind Farm, *supra* note 111; Shell, Annual Report and Accounts 2020 at 27.

¹¹⁴ Shell describes Holland Hydrogen 1 as “Europe’s largest renewable hydrogen plant once operational in 2025.” Shell, Press Release: Shell to Start Building Europe’s Largest Renewable Hydrogen Plant (July 6, 2022), <https://www.shell.com/media/news-and-media-releases/2022/shell-to-start-building-europes-largest-renewable-hydrogen-plant.html>; Shell, Third Quarter 2022 Unaudited Results at 2 (Oct. 27, 2022); Leigh Collins, Recharge, ‘Takes Guts’: Shell Gives Green Light to 200MW Dutch Green Hydrogen Project Powered by Offshore Wind, <https://www.rechargenews.com/energy-transition/takes-guts-shell-gives-green-light-to-200mw-dutch-green-hydrogen-project-powered-by-offshore-wind/2-1-1253563>.

¹¹⁵ Shell, Sustainability Report 2021, Wind: Wind Projects at the End of 2021, <https://reports.shell.com/sustainability-report/2021/achieving-net-zero-emissions/providing-lower-carbon-electricity/wind.html>; Shell, Hydrogen: Shell Hydrogen Projects, <https://www.shell.com/energy-and-innovation/new-energies/hydrogen.html#projects>; Shell, Notice of 2022 AGM, *supra* note 7; Shell, Press Release: Shell to Start Building Europe’s Largest Renewable Hydrogen Plant, *supra* note 114.

even major projects within the ~1.5% of capex that Shell is directing towards renewable energy sources are apparently being used to facilitate the company's oil and gas production.

3. Conclusion

The financial and physical impacts of climate change clearly pose material risks to all companies and their investors, particularly those in fossil fuel industries. Shell's own financial disclosures demonstrate that the company recognizes that climate change poses material risks to the profitability of a business so heavily dependent upon continued fossil fuel production. In extensive legal disclaimers, Shell exhaustively covers these risks, from physical risks to transitional risks to the risks posed by potential and ongoing litigation.¹¹⁶ These may shield Shell from liability for underperformance of its fossil fuel assets moving forward.¹¹⁷ But the company's disclaimers cannot insulate it from its responsibility to its shareholders to accurately characterize its business activities.¹¹⁸

Shell recognizes that its actions to mitigate its impact on the climate are material to investors. In 2021, Shell began putting its "Energy Transition Strategy" to an advisory vote, stating that the strategy is "designed to bring our energy products, our services, and our investments in line with the goal of the Paris Agreement and the global drive to combat climate change."¹¹⁹ This vote, and the Energy Transition Strategy itself – as well as Shell's ubiquitous references throughout the strategy and its annual and quarterly reports to the way it has transformed the company to meet the needs of the energy transition – confirm Shell's awareness that climate and actions taken to address climate issues matter deeply to its investors and will be a major factor in investment decisions over the coming decades.

Responses to the advisory vote and to the strategy demonstrate the impact Shell's claims have on investors' decisions about whether to maintain their investments. One large investor, the Church of England Pensions Board, explained that it would be voting in favor of Shell's resolution partly because it saw the vote as an "important step in Shell's transition from an oil and gas producer to be an energy company" and an indication that "a multi-decadal transition is clearly underway."¹²⁰ The Board also expressed its belief that "Shell is starting to transition and the pace of change is only going to continue."¹²¹

As outlined in this complaint, Global Witness believes that including fossil fuel activities in its RES segment may have enabled Shell to exaggerate its spending on renewable energy sources and overstate the company's "energy transition." In particular, Shell's allocation of gas-related activities to a segment entitled "Renewables and Energy Solutions" and failure to provide its shareholders with disaggregated financial disclosures may have led the company to both misstate and omit material facts necessary to render RES not misleading.¹²² Given the increasing importance investors ascribe to companies' climate change mitigation efforts, there is a "substantial likelihood" that disclosing the true extent of Shell's

¹¹⁶ Shell, Annual Report and Accounts 2021 at 22-33.

¹¹⁷ Pursuant to the "safe harbor" provision in the Private Securities Litigation Reform Act. 15 U.S.C. § 78u-5(c)(1)(A)(i).

¹¹⁸ The PSLRA safe harbor does not apply and a company may be held liable for making a false "concrete factual assertion about a specific present or past circumstance." *Wochos v. Tesla, Inc.*, 9th Cir. No. 19-15672 (filed Jan. 26, 2021).

¹¹⁹ Shell, Press Release: Shell Presents Energy Transition Strategy Publication to Shareholders for Advisory Vote, *supra* note 17.

¹²⁰ Statement by Adam Matthews, Church of England Pensions Board & Co-lead for Climate Action 100+ engagement with Royal Dutch Shell, following the publication of their Energy Transition Strategy (Apr. 19, 2021), <https://www.churchofengland.org/media-and-news/news-releases/shells-energy-transition-strategy>.

¹²¹ *Id.*

¹²² 17 C.F.R. § 240.10b-5.

financial commitment to renewable energy would “alter the ‘total mix’ of information available to an investor and take on ‘actual significance in the deliberations of [a] reasonable shareholder.”¹²³

An investigation by the U.S. House Committee on Oversight and Reform recently found that Shell has worked “to keep [its] climate pledges vague and to avoid making commitments to reduce emissions.”¹²⁴ Ultimately, Shell should not be allowed to claim that it takes seriously climate change and the need to transition away from oil and gas and towards renewable sources of energy, or that these considerations are central to its current and projected business plans, while effectively “placing multibillion-dollar bets against humanity halting global heating.”¹²⁵

Remedy requested

We believe that Shell’s disclosures may be in breach of relevant securities laws and regulations, in particular Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Accordingly, we respectfully ask the Commission to address Shell’s apparent greenwashing and:

- Open a Matter under Inquiry or an Investigation into whether Shell has (a) violated relevant accounting standards and (b) made untrue statements of or omitted material facts necessary to make its financial filings not misleading by combining gas and renewable energy investments in a segment entitled “Renewables and Energy Solutions” while failing to disclose how spending is distributed across the activities in the segment;
- Enjoin Shell from reporting gas and renewable investments together as “Renewables and Energy Solutions,” should the Commission determine that Shell has made misleading statements or omissions that pose a material risk to investors in doing so;
- Impose adequate civil money penalties¹²⁶ to send a message of deterrence to Shell and similarly situated oil and gas companies who might be tempted to follow in Shell’s footsteps.

Respectfully,

Zorka Milin
Senior Advisor
Global Witness

¹²³ TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

¹²⁴ Committee on Oversight and Reform, Memorandum from Chairwoman Carolyn B. Maloney and Chairman Ro Khanna re: Investigation of Fossil Fuel Industry Disinformation at 16-17 (Sept. 14, 2022), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.09.14%20FINAL%20COR%20Supplemental%20Memo.pdf>.

¹²⁵ Damian Carrington & Matthew Taylor, Revealed: The ‘Carbon Bombs’ Set to Trigger Catastrophic Climate Breakdown, Guardian (May 11, 2022), <https://www.theguardian.com/environment/ng-interactive/2022/may/11/fossil-fuel-carbon-bombs-climate-breakdown-oil-gas>.

¹²⁶ 15 U.S.C. 78u(d)(3); Statement of the Securities and Exchange Commission Concerning Financial Penalties (January 4, 2006), <https://www.sec.gov/news/press/2006-4.htm>.

Appendix

Shell Filings, Reports, and Public Statements Containing Potentially Misleading Misstatements or Omissions

- [Annual Report and Accounts 2021](#) at 10, 14, 30, 31, 45, 46, 49, 67, 77, 82, 86, 92, 96, 115, 117, 130, 154, 161.
- [Energy Transition Strategy 2021](#) at 18, 19.
- [Energy Transition Progress Report 2021](#) at 5, 10, 24, 25, 33.
- [Sustainability Report 2021](#) at 32, 67.
- [Fourth Quarter 2021 and Full Year Unaudited Results](#) at 8 (Feb. 3, 2022).
- [Fourth Quarter 2021 Results Presentation](#) at 8, 14, 18, 32 (Feb. 3, 2022).
- [First Quarter 2022 Results Press Release](#) at 1, 2, 7 (May 5, 2022).
- [First Quarter 2022 Unaudited Results](#) at 2, 7, 13, 14, 20, 21, 22 (May 5, 2022).
- [First Quarter 2022 Presentation](#) at 6, 7, 23, (May 5, 2022).
- [Second Quarter 2022 Results Press Release](#) at 7 (July 28, 2022).
- [Second Quarter 2022 and Half Year Unaudited Results](#) at 3, 8, 14, 15, 23, 24, 25, 30 (July 28, 2022).
- [Second Quarter 2022 Presentation](#) at 6, 8, 22, 23 (July 28, 2022).
- [Third Quarter 2022 Results Press Release](#) at 7 (Oct. 27, 2022).
- [Third Quarter 2022 Unaudited Results](#) at 2, 9, 16, 17, 25, 26, 27 (Oct. 27, 2022).
- [Third Quarter 2022 Presentation](#) at 5, 21 (Oct. 27, 2022).
- [Press Release: Shell Accelerates Drive for Net-Zero Emissions With Customer-First Strategy](#) (Feb. 11, 2021).
- [Notice of 2022 AGM and Shell's Energy Transition Progress Report](#) (Apr. 20, 2022).
- [Enhanced Disclosures – New Reporting Segments](#) (May 3, 2022).
- [Shell Strategy Day 2021, Presentation Transcript](#) at 9-11 (Feb. 11, 2021).