

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Rate Recovery, Reporting, and Accounting     )**  
**Treatment of Industry Association Dues and    )**     **Docket No. RM22-5-000**  
**Certain Civic, Political, and Related Expenses )**

**COMMENTS OF THE CONSUMER COALITION FOR  
ELECTRICITY RATE TRANSPARENCY**

The Consumer Coalition for Electricity Rate Transparency (Consumer Coalition)<sup>1</sup> respectfully submits these comments in response to the December 16, 2021 Notice of Inquiry (NOI)<sup>2</sup> in the above-captioned docket, in which the Federal Energy Regulatory Commission (FERC or Commission) seeks comment on the accounting treatment of industry association dues and the ratemaking implications of potential accounting and reporting changes of such dues.

The Consumer Coalition appreciates the Commission’s attention to the matter of how utilities account for and report the expenditure of dues paid to trade associations and whether utilities should recover a portion of those dues from ratepayers. Through this NOI, the Commission has an opportunity to shore up public trust by bringing transparency and new accountability to the electric sector by (1) developing clear guidelines on recoverable expenses and (2) requiring disclosure by utilities for those industry association dues the Commission determines to be recoverable.

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<sup>1</sup> Electricity Consumers Resource Council, Advanced Energy Buyers Group, Public Citizen, R Street Institute, and Energy Choice Coalition.

<sup>2</sup> *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Notice of Inquiry, 177 FERC ¶ 61,180 (2021) (NOI).

Electricity costs are increasing in many regions and will continue to rise.<sup>3</sup> In terms of total energy burden, the national average energy burden for low-income households in 2021 was 8.6 percent.<sup>4</sup> Further, we know that a 10 percent increase in household energy costs would push hundreds of thousands of Americans into energy poverty.<sup>5</sup> All electricity customers deserve a clear statement of what they are paying for, including an assurance that the money they pay to their electric utility will not be used to fund lobbying activities that advocate against their interests.

## **I. THE COMMISSION SHOULD ESTABLISH A BRIGHT LINE DELINEATION BETWEEN RECOVERABLE AND NONRECOVERABLE INDUSTRY ASSOCIATION DUES**

Recent high-profile political scandals involving investor-owned utilities<sup>6</sup> have

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<sup>3</sup> See e.g., Josh Saul “U.S. Electricity Costs Surge Most Since 2009 as Weather Cools,” Bloomberg (Nov. 10, 2021), <https://www.bloomberg.com/news/articles/2021-11-10/energy-inflation-to-bring-higher-u-s-heating-bills-this-winter>; Peter Capers and Sean Murphy “Unpacking the Disconnect Between Wholesale and Retail Electric Rates,” Berkeley Lab Electricity Markets and Policy (Aug. 2019), <https://emp.lbl.gov/publications/unpacking-disconnect-between>.

<sup>4</sup> See Shelby DuPont “U.S. Department of Energy Uses ACS Data to Power the Low-income Energy Affordability Data (LEAD) Tool,” U.S. Census Bureau (Feb. 23, 2021), <https://www.census.gov/programs-surveys/acs/about/acs-data-stories/lead-tool.html>.

<sup>5</sup> See U.S. Senators Lisa Murkowski and Tim Scott, Plenty At Stake: Indicators of American Energy Insecurity - An Energy 20/20 White Paper (Sept. 2014), <https://www.energy.senate.gov/services/files/075f393e-3789-4ffe-ab76-025976ef4954>.

<sup>6</sup> See e.g., “FirstEnergy agrees to pay \$230M fine for bribing Ohio officials to bail out two nuclear plants,” Utility Dive (July 23, 2021), <https://www.utilitydive.com/news/firstenergy-agrees-to-pay-230m-fine-for-bribing-ohio-officials-to-bail-out/603836/>; “Records Show Senior Florida Power & Light Execs Closely Connected to Election Scandals,” Energy and Policy Institute (Dec. 6, 2021), <https://www.energyandpolicy.org/records-show-senior-florida-power-light-execs-closely-connected-to-election-scandals/>; “Exelon Unit Admits Bribery as Probe Entangles Illinois Speaker,” Bloomberg Law (July 17, 2020), <https://news.bloomberglaw.com/in-house-counsel/exelon-gains-after-resolving-federal-lobbying-investigation>; “APS acknowledges spending millions to elect Corporation Commission members, after years of questions,” azcentral.com (Mar. 29, 2019), <https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/>; “New Orleans fines Entergy \$5M over actors paid to support gas plant,” Utility Dive (Nov. 1, 2018), <https://www.utilitydive.com/news/new-orleans-fines-entergy-5m-over-actors-paid-to-support-gas-plant/541144/>.

illuminated the lack of transparency in accounting for political activity and trade association dues that are ultimately recovered from ratepayers. According to public tax records, the total revenue in 2019 for the trade association representing investor-owned utilities was more than \$90 million.<sup>7</sup> Clear guidance from the Commission on which association dues and expenses meet the “just and reasonable” standard would protect all parties (including the utilities themselves) but, most importantly, consumers.

As described in the NOI, current accounting requirements do not provide a reliable or effective means for determining which dues expenses should or should not be recoverable. The NOI itself explains that expenditures listed in the Uniform System of Accounts (USofA) Account 930.2 are presumed to be recoverable in rates, as determined by the utility. In contrast, expenses paid by utilities for industry association activities listed in Account 426.4 are presumably not recoverable as they are “nonoperating in nature.”<sup>8</sup> However, there are differences in interpretation in both instances, and the fact that a utility decided to list an expenditure in one or the other of these two accounts should not govern its recoverability.

Furthermore, only in the event of an audit, a challenge to a rate filing under section 205 of the Federal Power Act, or a section 206 complaint does the Commission make a determination about any given expenditure, and in many cases, it has found that the level of detail provided in the accounting is insufficient.<sup>9</sup>

A. Determination of Recoverable Industry Association Dues Should Not Be

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<sup>7</sup> See <https://projects.propublica.org/nonprofits/organizations/130659550>.

<sup>8</sup> See NOI at PP 4, 6.

<sup>9</sup> See NOI at PP 7-8, 14.

### Left to the Utilities' Discretion

Utilities should not be responsible for determining whether industry dues are recoverable as there is a perverse incentive to fully recover these expenses with little incentive to protect ratepayers. Furthermore, utilities often spend association dues on political activities that directly impact ratepayers even if such activities adversely impact ratepayers. Utility customers have limited means to participate or influence the political activities, campaign donations, and civic engagement of their utility even if those activities are harmful to consumers.

In addition, customers have little recourse if political activities benefit shareholders at the expense of customers. Recovering these expenses from customers adds insult to injury. Not only do customers have no say in the political influence campaigns of trade organizations that could harm them, but customers are paying for those adverse activities with little to no insight into how their utility bills are being used against them. The most important driver for utilities and their trade associations is to provide a reasonable return on shareholders' investments, not saving money for consumers.

Finally, requiring customers to pay for activities for which they receive no benefit would violate the Commission's duty to ensure just and reasonable rates as well as the "beneficiary pays" application of the cost causation principle.<sup>10</sup>

#### B. The Commission Must Establish Clear Guidelines on Recoverable and Non-Recoverable Expenses

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<sup>10</sup> See <https://iea.blob.core.windows.net/assets/imports/events/153/Dennis.pdf>.

In order for the Commission to ensure just and reasonable rates for customers, it must delineate between recoverable and non-recoverable expenses and leave little room for interpretation or gaming. As Commissioner Danly noted in his dissent:

Having decided to pursue this NOI it may be possible for the Commission to identify through this proceeding ways to reform the Commission's accounting regulations that eliminate genuine ambiguity. There seems to be, for instance, confusion over whether and how definitions of "lobbying" and "political activity" from the Internal Revenue Code, the Lobbying Disclosure Act, or other federal statutes relate to FERC's accounting regulations. These statutes provide relatively clear definitions of these terms that have been subject to litigation and refinement in the courts. The Commission's accounting regulations could potentially benefit from incorporating such terms.<sup>11</sup>

In the spirit of the "beneficiary pays" application of the cost causation principle, only those association dues expenses that directly benefit the end-use customer can be considered for recoupment. Certain trade association activities that improve utility operations for the benefit of customers may meet the standard of "just and reasonable" expenditures. If such dues contribute directly to reducing wholesale and/or retail rates or provide other tangible customer benefits, then the utility can make the case that such dues are recoverable.

Activities such as consumer education, reliability improvements through participation in North American Electric Reliability Corporation (NERC) stakeholder forums, greater energy access or choice for ratepayers, or lobbying against policies detrimental to ratepayers or environmental justice communities could be considered recoverable with an adequate showing of benefit to consumers. If industry association

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<sup>11</sup> Dissenting Statement of Commissioner James Danly, 177 FERC ¶ 61,180, P 9 (2021).

dues are allocated to employee training, establishment of best practices, or national contract standardization, for example, a utility may be able to make the case that the dues are recoverable under FERC-jurisdictional rates.

Some trade association programs do indeed benefit consumers and have been granted recoverable expenses. These include the Edison Electric Institute's Mutual Assistance Program, the national spare transformer program, and the resources dedicated to the Electricity Sub-sector Coordinating Council. Other trade association campaigns provide customer benefits through education programs such as information on energy efficiency and weatherization and how to combat scams that pose as their utility.<sup>12</sup>

However, political influence campaigns would only be recoverable if done on behalf and to the benefit of ratepayers and not utility shareholder profit or other legislative and regulatory matters favorable only to the utility – especially if the outcome is to stifle competition or unreasonably raise customer rates.<sup>13</sup> Although charitable and civic donations benefit customers and their communities, we agree with

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<sup>12</sup> See e.g., <https://www.georgiapower.com/residential/save-money-and-energy/products-programs/home-energy-efficiency-programs.html>; Edison Electric Institute "Electric Companies Urge Customers to Prepare Now for Hurricane and Wildfire Seasons," (May 10, 2021), <https://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/Electric%20Companies%20Urge%20Customers%20to%20Prepare%20Now%20for%20Hurricane%20and%20Wildfire%20Seasons.aspx>; Utilities United Against Scams "Utilities United Against Scams Recognizes Sixth Annual Utility Scam Awareness Day on November 17," (Nov. 15, 2021), <https://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/2021%20UUAS%20Fraud%20Awareness%20Week.pdf>.

<sup>13</sup> See e.g., "Duke opposes NC legislation to study power market reform." S&P Global – Market Intelligence (May 1, 2021), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/duke-opposes-nc-legislation-to-study-power-market-reform-64492959>; "Edison Electric Institute Campaign Against Distributed Solar," Energy and Policy Institute (Mar. 7, 2015), <https://www.energyandpolicy.org/edison-electric-institute-campaign-against-distributed-solar/>.

Commissioner Christie that the Commission should consider clarifying regulations or codifying policy set by precedent that a monopoly should not be able to recover from customers the costs of its contributions and grants to charitable and civic organizations.<sup>14</sup> As Commissioner Christie said succinctly, “Giving away other people’s money is not altruism.”<sup>15</sup>

Along these lines, the Commission should provide clear guidelines as to what is recoverable and non-recoverable, beyond those enumerated in the USofA, to ensure consumers are not bearing unjust and unreasonable costs.

C. Industry Association Dues Should Be Presumptively Non-Recoverable

In addition to protecting ratepayers from funding the lobbying and political influence activity of utilities and their trade associations, ratepayers should not bear the burden of showing that such expenses are not recoverable. The average electricity customer has neither the expertise nor the time to fully understand wholesale ratemaking and analyze their utility bills and retail rate structures. It must be incumbent upon the utility requesting recovery of its expenses to demonstrate that industry association dues provide direct and tangible benefits to consumers.

Ratepayers should not cover the cost of lobbying and advocacy campaigns unless, as in the examples in section (B) above, the utility can show that ratepayers are the direct beneficiaries. The mission of a trade association for investor-owned utilities is

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<sup>14</sup> See e.g., Letter Order re: Audit of UGI Utilities, Inc., Docket No. FA20-3-000 at 39-42; *Ameren Ill. Co.*, 169 FERC ¶ 61,147 at P 81 (2019); Letter Order re: Audit of Southern Company Services, Docket No. FA12-1-000 at 2-3, 30-31 (May 28, 2013).

<sup>15</sup> Concurring Statement of Commissioner Mark C. Christie, 177 FERC ¶ 61,180, P 9 (2021).

largely to support the shareholder owners of its member companies, not customers. Although some trade associations have sought to claim the mantle of consumer interest in lobbying and public relations campaigns, the information provided under revised accounting procedures should be sufficient to lift the mantle and determine whether those claims are justified. As with any section 205 rate case, utilities are required to show that their rate request is just and reasonable. It is at that point that interested parties, including consumers, can challenge such assertion.

Sufficient evidence of consumer benefit must accompany any request to recover industry association dues. Utilities seeking to recover dues from ratepayers should be required to provide a detailed justification with supporting documentation that such dues recovery is prudent and in the interest of customers. The association's record-keeping and data, in addition to a clear demonstration of consumer benefit, should be sufficiently transparent to explain such expenses so that the Commission and customers alike can determine the reasonableness of such recovery.

## **II. THE COMMISSION SHOULD ESTABLISH MANDATORY REPORTING AND DISCLOSURE PRACTICES TO INCREASE TRANSPARENCY REGARDING RECOVERABLE DUES EXPENSES**

The Consumer Coalition wholly supports the reporting requirements cited in NOI Q.13. These requirements benefit both the utility, by providing a list of necessary data to adequately support their case for expense recovery, and the ratepayer, by providing increased transparency into utility rate requests.

NOI Q.13(a) considers requiring that utilities seeking to recover dues must provide detailed data that sufficiently explains such costs in their books and records

and is made available for Commission audits. Requiring explanations in utilities' books and records would provide much greater transparency into the political activities, lobbying, and fundraising of both the utility and its trade association to help determine the recoverability of such costs. Although it may introduce additional burdens in reporting, utilities and trade associations would benefit from clear and detailed entries should they be audited by the Commission or challenged by interested parties. Such recordkeeping would also provide clear evidence of whether utility rate requests ensure just and reasonable rates for customers.

Limiting a utility's ability to recover association dues to those associations that publicly disclose spending (see NOI Q.13 (b)) goes hand in hand with the ability for a utility to make its cost recovery request. Without detailed information as to the trade association's activities and funding, a utility would be hard pressed to demonstrate the need for recovery. Trade associations generally provide this detailed information to their members in the form of invoices, value reports, and board materials. These are generally not made available to the public. However, should a utility wish to recoup trade association dues, this information would need to be filed as supporting data and be disclosed in Commission filings to justify recovery.

Finally, to the extent that utilities are recovering association dues through FERC-jurisdictional rates, this information should be disclosed in stated rate filings and annual formula rate updates, per NOI Q.13(c). Again, with the burden being shifted to the utilities to prove that benefits of association dues accrue to customers, this would be necessary data to form their arguments. If a utility does not report industry association

dues in these matters, the rebuttable assumption is that these costs are non-recoverable.

However, the Consumer Coalition again cautions the Commission to apply clear guidelines as to recoverable activities. As demonstrated in NOI Q.5, not all trade association activities benefit consumers. Many of these activities will, in practice, overlap, and it is unlikely that an association's public information campaign will *not* bear the fingerprints of legislative and regulatory staff. If the Commission deems lobbying activities non-recoverable, it would minimize the risk to customers of funding advocacy that runs counter to their interests.

### CONCLUSION

The Consumer Coalition appreciates the Commission's efforts to re-examine the reporting and accounting rules for industry association dues and the ability to recover such expenses. We urge the Commission to take a more proactive stance on cost recovery of association dues and set clear guidelines as to what is recoverable, shifting the burden of proof for recovery on utilities, and improving the transparency into trade association activities that may be adverse to customer interests.

Respectfully submitted,

*Advanced Energy Buyers Group*

*Electricity Consumers Resource Council*

*Energy Choice Coalition*

*Public Citizen*

*R Street Institute*

Dated: February 22, 2022