Exhibit No.:	
Issue(s):	*Incentive Compensation, Severance, Property Taxes, Dues and Donation, Payroll Capitalization Rates, Payroll Wages, Payroll Taxes, Payroll Benefits, Incentive Compensation, Meter Replacement Overhead and Maintenance, Property Taxes, TOU Education Costs, Electrified Assets, Demand Side Management ("DSM") Opt-Out Costs, Prospective Tracking*
Witness:	*Nathan Bailey, CPA*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Surrebuttal / True-Up Direct Testimony*
Case No.:	*ER-2026-0143*
Date Testimony Prepared:	*September 10, 2026*

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS SERVICES DIVISION

AUDITING DEPARTMENT

SURREBUTTAL / TRUE-UP DIRECT TESTIMONY

OF

NATHAN BAILEY, CPA

EVERGY METRO, INC., d/b/a Evergy Missouri Metro

CASE NO. ER-2026-0143

Jefferson City, Missouri
September 2026

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NATHAN BAILEY, CPA

EVERGY METRO, INC.,
d/b/a Evergy Missouri Metro

CASE NO. ER-2026-0143

Q. Please state your name and business address.

A. My name is Nathan Bailey. My business address is Fletcher Daniels State Office building, Room 201, 615 East 13th Street, Kansas City, Missouri 64106.

Q. Are you the same Nathan Bailey who filed revenue requirement direct testimony and rebuttal in this case?

A. Yes.

<u>EXECUTIVE SUMMARY</u>

Q. What is the purpose of your surrebuttal testimony and true-up direct testimony?

A. My surrebuttal testimony will respond to Evergy Missouri Metro ("EMM") rebuttal testimony from EMM Witness Ronald A. Klote regarding severance, incentive compensation and property taxes, witness Darcie G. Kramer regarding dues and donations and payroll capitalization rate and finally witness Patrick Aron Branson regarding short term incentive composite rates.

My true-up testimony will describe updates through the true-up period ending June 30, 2026, for payroll wages, payroll taxes, payroll benefits, incentive compensation, meter replacement overhead and maintenance, property taxes, time of use ("TOU") education costs, electrified assets, demand side management ("DSM"), and the prospective tracker. This testimony will include a description of any changes in Staff's methodology.

SURREBUTTAL

PROPERTY TAXES

Q. What is EMM's position regarding the deferred amount of property tax related to the property tax tracker?

A. As described by Witness Klote on pages 39-41 of their rebuttal testimony, EMM proposes to defer property tax expense beginning August 28, 2022, the effective date of the property tax legislation, using a property tax level from EMM's 2018 general rate case, Case No. ER-2018-0145.

Q. What is Staff's position regarding the deferred amount of property taxes?

A. As explained in my rebuttal testimony, Staff included the unamortized balance of property taxes based on the base level of property taxes approved by the Commission within the *Stipulation and Agreement* in Case No. ER-2022-0129. The 2022 rate case was EMW's[1] first general rate case following the implementation of the property tax tracker. Staff calculated the unamortized balance beginning with the effective date of rates in the 2022 rate case, January 9, 2023, through December 31, 2025, for its direct filing and through June 30, 2026, for the true-up filing.

Q. Would you clarify why January 9, 2023, is significant to this case?

[1] Evergy Missouri West, Inc., d/b/a Evergy Missouri West ("EMW").

A. Yes. It is the date that rates became effective for EMM's most recently completed rate case, Case No. ER-2022-0129, in which the Commission ordered EMM's established base for property taxes to be exactly $66,275,232 referencing property tax tracking legislation Section 393.400, RSMo.[2] This was the first established base following the passage of tracking legislation on August 28, 2022.

Q. Beginning on page 40, line 17 of their rebuttal testimony, Witness Klote suggests that Staff failed to calculate the correct amount for the deferred property taxes for the period of August 28, 2022, through January 8, 2023. Did Staff fail to calculate deferred property taxes for the period of August 28, 2022, through January 8, 2023?

A. No. It is Staff's position that reaching back to the 2018 rate case is not consistent with the legislation's language of "recently completed general rate proceeding," in regard to whether or not the tracker began prior to the 2022 rate case or after. In Case No. ER-2022-0129, EMM's first rate case following the passage of the property tax legislation, a base level of property taxes was established to track future property taxes paid by EMM. A discrete, agreed-upon base level of property taxes did not exist in the 2018 rate case. Staff's recommendation in the 2022 rate case included the establishment of a base level of property taxes and any deferral of property taxes will begin with the effective date of rates in that case, January 9, 2023. The Missouri jurisdictional base level of $66,275,232 is included in the *Order Approving Four Partial Stipulations and Agreements* issued by the Commission on September 22, 2022,

[2] Case No. ER-2022-0129, Stipulation and Agreement, page 9, approved by the Commission on September 22, 2022, EFIS Item No. 326.

approximately one month after the effective date of the property tax legislation. This amount is used to track any over and under recovery of property taxes following the effective date of rates in the 2022 rate case, January 9, 2023.

Q. Is EMM suggesting that a base level of property taxes existed in the 2018 rate case, four years prior to the passage of the property tax legislation?

A. Yes. Witness Klote claims on page 40 of their testimony that the property taxes included in the revenue requirement in the EMM 2018 rate case should be used to begin tracking property taxes beginning with the effective date of the legislation, August 22, 2022, through the effective date of rates in Case No. ER-2022-0129, January 9, 2023.[3] He claims that EMM and Staff agreed to the same level of property tax expense in the 2018 case.

Q. Were Staff and EMW in agreement with the annualized property taxes in the 2018 rate case?

A. No. As Witness Klote properly noted on page 40 of their testimony, there was a difference of $72,086 between the EMM and Staff recommended annual level of property taxes in the 2018 rate case. This difference is both small and irrelevant to this issue. Specifically, there was no reason for the parties to agree to a base level of property taxes for any purpose four years prior to the passage of the property tax legislation that required a base level of property taxes to be set.

[3] *Rebuttal of Ronald Klote*, ER-2026-0143, page 40, lines 12-16.

Q. Did EMM propose the same treatment for the property tax base level in its last rate case, Case No. ER-2022-0129?

A Yes. EMM proposed to use a property tax base level from the 2018 rate case, of which there was no agreement and was four years prior to the passage of the legislation. Staff opposed EMM's proposal in the 2022 rate case.

Q. Does the property tax tracker legislation support establishing a base level using the amounts included in Staff's true-up accounting schedules in the EMM 2018 rate case?

A. No. The property tax tracker legislation was effective in August 2022. A base level of property taxes did not exist to track deferred property taxes for EMM that occurred prior to the effective date of the property tax legislation. The effective date of rates in EMM's 2018 rate case was December 6, 2018, nearly four years before the effective date of the property tax legislation. It is impossible for the parties to consider or the Commission to order a base level of property taxes for legislation that did not exist during EMW's 2018 rate case.

Q. Does Staff have additional concerns with EMM's request to track property taxes using a property tax amount that was not agreed to by any party in the 2018 rate case?

A. Yes. EMM is asking the Commission to track property taxes based on its 2018 rate case, four years prior to the passage of the legislation. The law states that utilities:

> ...shall defer to a regulatory asset or liability account any difference in state or local property tax expenses actually incurred, and those on which the revenue requirement used to set rates in the corporations most recently completed general rate proceeding was based.

There are several utilities that are regulated by the Commission that have not requested a rate increase for several years, and in some cases, much longer than the four years for EMM. For example, Summit Natural Gas has not filed a general rate case since 2014, Case No. GR-2014-0086. Staff's interpretation in this case of a *most recently completed general rate proceeding* and subsequent recommendations for the property tax deferral and expense levels is consistent Staff's interpretation in every other Missouri utility's rate cases since the passage of the property tax legislation. If the Commission agrees with EMM to track property taxes based on a level that was not agreed to by all parties in a rate case prior to August 2022, customers will be paying for the difference in property taxes that were incurred five, six, and possibly twelve years ago.

Q. How has Staff treated the deferral of property taxes for other Missouri regulated utilities?

A. Staff is consistent with the treatment of the deferral balance and the method used to determine an annualized level of property taxes for all the regulated Missouri utilities that have filed a general rate case following the passage of the property tax tracker legislation. This includes, but is not limited to, utilities that Staff has used the ratio method to determine an annualized level of property taxes in the past. Staff has recommended a base level of property taxes for every regulated Missouri utility that has filed a general rate case after the effective date of the property tax legislation, August 28, 2022. The base level for all the utilities was based on the last known annual amount, not the ratio method, of property taxes incurred by the utility. The ratio method previously discussed has not been used by Staff to determine an annualized level of property taxes for any Missouri regulated utility since the passage of the legislation.

Q. What base level of property tax expense does Staff recommend the Commission explicitly identify and approve in this proceeding to be used to track property taxes incurred following the effective date of rates in this case?

A. Staff recommends a base level be set in this present case and explicitly identified in the Commission's Order for EMM of $139,834,576.

Q. What is Staff's recommendation for the unamortized balance of property taxes through the true up period, June 30, 2026, based on the base level that was established in EMM's Case No. ER-2022-0129?

A. Staff's recommended unamortized balance as of the true up period, June 30, 2026, is $6,493,499 and an annual amortization expense based on the four-year period of $1,623,375.

Q. What is Staff's recommendation for the unamortized balance if the Commission determines that EMM can track property taxes beginning August 28, 2022, through January 9, 2023, using a base level of property taxes from the 2018 case?

A. If the Commission determines that EMM is eligible to take advantage of the property tax tracker as of August 28, 2022, and agrees that EMM's property tax expense from Case No. ER-2022-0129 can be used to calculate the under or over recovery of property taxes for the period of August 28, 2022, through January 9, 2023 (effective date of rates in Case No. ER-2022-0129), an additional $4,052,953 would be included in the unamortized balance with an increase in annual amortization of $1,013,238 based on four years.

SEVERANCE

Q. What is Staff's position on the inclusion of severance expense in the cost of service?

A. Staff recommends removal of all severance expense allocated to EMM from the test year period.

Q. Has the Commission denied severance expense to EMM in the past?

A. Yes. The Commission has consistently denied EMM and other utilities nonrecurring costs associated with individuals employed by the utility as discussed below.

Q. Would you identify some of the rulings from the Commission excluding severance expense?

A. Yes. The Commission denied rate recovery of severance expense in Case No. GR-96-285 for Missouri Gas Energy ("MGE"). The Commission's decision on this topic read as follows:

> The Commission finds that MGE's position is based upon fallacious reasoning. It is appropriate that prospective rates will be set on recently available payroll expense. MGE overlooks the substantial cash flow savings that it has achieved by terminating the

> employees. OPC's evidence shows that Southern Union's shareholders have already received more than the severance costs in terms of reduced payroll. The rates that MGE has been charging are premised on a payroll level higher than that which it currently has, so it has profited by the decreased number of employees.
>
> > The Commission finds that MGE's shareholders have already received monetary compensation through the reduction in payroll expense. The Commission will not allow MGE to charge ratepayers the costs associated with employee severances where MGE has already recovered those costs. The Commission finds that the position of Staff and OPC is most reasonable on this issue.[4]

The Commission also denied recovery of severance expenses approximately 10 years later for EMM, then known as Kansas City Power and Light Company ("KCPL") in the 2006 rate case, Case No. ER-2006-0314 page 62, finding:

> The Commission finds that the competent and substantial evidence supports Staff's position, and finds this issue in favor of Staff. Staff's witness on this issue, Charles Hyneman, testified that KCPL answered one of his data requests by admitting that severance costs protect KCPL against such issues as sexual harassment or age discrimination, and that such costs are not recoverable in rates. He contrasted those severance payments, made only to protect shareholders, with severance payments made to decrease payroll, which could be included in cost of service because of the benefit to ratepayers. Moreover, Staff points out that KCPL excluded its 2005 severance costs from its earnings per share calculation that determines its management's incentive compensation payment. The Commission sees no equity in allowing KCPL to recover these costs from ratepayers when its own management excludes those same costs from its EPS ["Earnings Per Share"] calculation, to the enrichment of its executives via the incentive compensation plan.
>
> [Footnotes omitted.]

[4] Report and Order, GR-96-285. MPSC Reports Vol 5, 3d, 453.

The Commission more recently wrote its explanation for denying severance expenses in Union Electric Company, d/b/a Ameren Missouri on pages 62-63 paragraphs 6-8, Case No. ER-2012-0166:

> Despite having already recovered the costs of the severance package, Ameren Missouri asks the Commission to again recover those costs from ratepayers through a direct three-year amortization. Ameren Missouri contends such recovery is justified because ratepayers will ultimately benefit from the cost reductions resulting from the severance package in an amount much greater than the direct costs the company seeks to amortize. Ameren Missouri also complains that from March 2009 through July 2012, the company actually under-recovered its payroll and benefit costs by $51 million. Finally, Ameren Missouri argues that it should be allowed to recover the additional amortization so that it will have an incentive to pursue further cost-cutting measures.
>
> Ameren Missouri prudently took steps to reduce its payroll costs to improve the efficiency of its operations. Under the lag that results from the traditional regulatory model, the company is able to retain those cost savings until it chooses to come back for a rate adjustment and a new level of costs is used to reset rates. In this case, Ameren Missouri, for reasons unconnected to these particular costs, has asked the Commission to adjust its rates. The new rates will reflect the lower personnel costs and the company will cease to benefit directly from the reduced payroll after having barely recovered its costs. If Ameren Missouri had not chosen to request a rate increase at this time, it would have continued to benefit from its reduced payroll costs. That is how the system works.
>
> Ameren Missouri is essentially asking the Commission to require ratepayers to give the company a $25.8 million bonus to reward the company for being efficient in reducing its payroll and to give it an extra incentive to reduce costs in the future. The Commission finds that the company does not need and will not receive any extra incentive to operate efficiently.
>
> [Footnotes omitted.]

Q. Does Staff agree that the Commission should include non-executive severance in the cost of service?

A. No. Staff maintains that severance costs of all types should be excluded from the cost of service for all the reasons discussed above and in my direct testimony.

Q. What argument does Witness Klote make for inclusion of non-management severance expense?

A. Witness Klote's rebuttal testimony states that severance expense is a "form of payroll cost"[5] and is comparable to other variable costs such as storm-related expenses or overtime.[6] This is a mischaracterization of the nature of severance costs.

Witness Klote describes severance agreements on page 37, lines 11-13, of their rebuttal as a "risk mitigation tool". Severance can act as a shield for the shareholder against legal action for misconduct by management.[7] It is not for the ratepayer to control or to guarantee any portion of these risks through recovery in rates. Neither the unpredictability of severance payments, nor the regulatory lag, positive or negative, should be sufficient to induce ratepayers to subsidize the risk of misconduct to protect shareholder interest.

INCENTIVE COMPENSATION – CAPITALIZED EARNINGS-BASED COMPENSATION IN PLANT

Q. Would you briefly summarize Witness Klote's rebuttal testimony on capitalized earnings-based incentive compensation?

[5] *Rebuttal of Ronald Klote*, ER-2026-0143, page 36, line 10.
[6] *Rebuttal of Ronald Klote*, ER-2026-0143, page 35, lines 1-4.
[7] Report and Order, ER-2006-0314, page 62.

A. Yes. On pages 38-39 of their rebuttal testimony, Witness Klote argues that EMM's calculation is the actual amount of earnings-based incentive compensation capitalized in plant and is more appropriate than Staff's calculated amount.

Q. What does Staff recommend regarding capitalized incentive compensation?

A. Staff recommends removing only the EMM allocated portion of net capitalized earnings-based incentive compensation from plant in service based upon actuals provided by EMM.

Q. Would you please describe Staff's position regarding capitalized incentive compensation?

A. Yes. Staff calculated this amount using EMM's responses to Staff Data Requests ("DR") 0098 and 0098.1, that included annual scorecards for the Annual Incentive Plan ("AIP") and Variable Compensation Plans ("VCP") plans which contain actual weighted payout percentages for each period's performance and multiplied this by the actual cash payout for the same period.[8] Staff then multiplied each resulting period's earnings-based component by their respective capitalization ratio. The resulting dollar amount represents capitalized incentive compensation for each period.

Staff removed only the EMM allocated portion of net capitalized earnings-based incentive compensation from plant in service. Staff's accounting schedules depreciate

[8]AIP plan is an incentive plan for executives of the company. VCP is an incentive plan for non-union management. See also *Direct Testimony of Nathan Baileyr*, ER-2026-0143, page 13, lines 18-21.

this balance over the same 20-year period suggested by EMM Witness Branson in their rebuttal testimony page 3, lines 12-13.

Q. Does Witness Klote agree with Staff's calculated balance removed from plant?

A. No. In rebuttal, Witness Klote advocates for using the EMM provided amounts in DR 0168T, from DR 0168, stating that the amounts provided are actuals.[9]

Q. Are DR 0168T amounts actual amounts?

A. No. They are not. They are EMM estimates. Cell B10 of the EMM submitted spreadsheet titled, "Q0168T_Capitalized Incentive Comp_PISA Deferrals" states that the provided amount is, "Estimated Capitalized Incentive Compensation Related to EPS".

Q. Did Witness Klote provide any other reason to use EMM's estimate rather than Staff's calculation of the adjustment?

A. No.

Q. How did EMM calculate its estimated balance?

A. EMM used the monthly balance sheet amounts for each plan and multiplied them by their respective total EPS performance percentage and the weighted percentage specified for earnings per share as listed in plan documents. In response to Staff's request, EMM provided calculations tying to EMM's DR 0168 on September 2, 2026.

[9] *Rebuttal of Ronald Klote*, ER-2026-0143, page 38, lines 17-21.

Q. Why does Staff recommend using its own methodology rather than the estimates provided by EMM?

A. Staff's amounts are based upon actual performance scorecard result percentages and actual cash-payout amounts as opposed to using the balance sheet. These annual percentages change depending on the performance for each year as do the total payouts for each year.

Q. Why is Staff's method more accurate that EMM's estimated amounts?

A. Staff used actual payouts year by year for the portions of incentive compensation based on earnings. According to discussions with EMM, EMM mixes all performance payouts in the balance sheet accounts across multiple years, and the amounts awarded based on earnings cannot be separated.

Q. Are there inherent estimate methodology problems related to mixing multiple years together in the balance sheet that Staff's methodology avoids?

A. Yes. Balance sheet accounts are what are known as permanent accounts, meaning they persist in the general ledger year to year. This means that when EMM applies a 2025 EPS percentage to the balance sheet amount, it may be applying it to amounts that are from 2024 or earlier. Staff's methodology ensures that all annual cash payouts are multiplied by the appropriate period EPS percentage.

INCENTIVE COMPENSATION – SHORT TERM COMPOSITE RATE

Q. Has Staff agreed to implement the recommendation of EMM Witness Branson's rebuttal testimony regarding composite depreciation rates for the adjustment related to short-term earnings compensation?

A. Yes. Staff has agreed to the 5% change in its True-Up Direct accounting schedules.

EDISON ELECTRIC INSTITUTE AND LOBBYING

Q. On pages 7-8 of their rebuttal testimony, Witness Kramer expresses disagreement with Staff's removal of all Edison Electric Institute ("EEI") allocated to EMM. Is that correct?

A. Yes. Witness Kramer asserts the majority of EEI dues should be recoverable in rates.[10]

Q. What is the Edison Electric Institute and its relevance to the present case?

A. EEI is the national association representing U.S. investor-owned electric companies to which EMM regularly pays dues. EEI is a registered lobbying institution[11] with headquarters located in Washington D.C. within walking distance of both the White House and Capitol Hill.[12]

Q. Why has Staff removed all EEI dues allocated to EMM from the cost of service?

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[10] *Rebuttal of Darcie Kramer*, ER-2026-0143 page 7, lines 18-23.
[11] U.S. Senate, Office of Public Records, https://lda.senate.gov/filings/public/filing/10f22dda-0ebe-41bc 8cc9-7f00cc8f6e96/print/?utm_source=chatgpt.com (last visited June 18, 2026).
[12] See Schedule NB-s6.

A. EMM has failed to quantify a benefit to ratepayers or provided evidence of any benefit to ratepayers in this case. The Commission has charged EMM with providing such evidence. The Commission has consistently denied any reimbursement for these dues, "until the Company can better quantify the benefit and activities that were the causal factor of the benefit, the Commission must disallow EEI dues and expenses."[13]

Q. Has EMM failed to quantify the benefit of EEI in the past?

A. Yes. In Case No. EO-85-185, the Commission stated on page 37 of its Report and Order that "the Company has been informed in prior rate cases that it must allocate its quantified benefits from membership in EEI." This order was filed on April 23, 1986, more than 40 years ago.

Q. EMM Witness Kramer summarized your testimony claiming, "Mr. Bailey states that the Commission has previously found that EEI membership provides benefits to both customers and shareholders".[14] Is this true?

A. No. I made no such claim. To my knowledge, the Commission has never found EEI to have provided a ratepayer benefit.

Q. Has EEI ever taken action that would benefit EMM at the expense of ratepayers?

A. Yes. In Case No. ER-2016-0156, KCPL's response to Staff DR 0445 stated that KCPL requested EEI to file an Amicus brief in KCPL Greater Missouri

[13] Report and Order, ER-82-66, pages 23-24.
[14] *Rebuttal of Darcie Kramer*, ER-2026-0143 page 7, lines 5-7.

Operations'("GMO")[15] appeal to the Supreme Court of the United States, Case No. 13-787.[16] EEI filed an Amicus Curiae brief in support of petitioner, GMO.[17] The brief concerned GMO's attempt to overturn the Commission's prior rate case decision regarding recovery of plant investment and transmission costs related to the Crossroads Energy Center ("Crossroads"). This energy center is more than 500 miles from EMM's territory and recovery of transmission costs would have increased the cost of service at least in the short-term.

Q. Witness Kramer also stated, "Mr. Bailey recommends disallowing the portion of EEI dues that he believes primarily benefits shareholders."[18] Is this true?

A. No. I have made no such statement. Staff makes no claim regarding the assignment of EEI benefits, if they exist. It is for EMM to provide a quantification of benefits to ratepayers.

Q. What portion of EEI dues does EMM propose to include in the cost of service?

A. EMM is requesting all dues that have not been identified as a lobbying expense by EEI itself be included in the cost of service.

Q. Has EEI ever attempted to influence utility regulatory bodies regarding the recoverability of its dues through the cost of service?

[15] Now doing business as Evergy Missouri West.
[16] See Schedule NB-s1.
[17] See Schedule NB-s2.
[18] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 7, lines 8-10.

A. Yes. EEI has attempted to influence FERC[19] regarding accounting rules related to FERC Uniform System of Accounts ("USOA") through public comment. In FERC Docket No. RM22-5-000, EEI argued against new rules that would make utility dues more likely to be classified as nonrecoverable lobbying expenses.[20] On April 16, 2026, FERC issued an order denying the petition for rulemaking and the new rules did not go into effect.[21] EEI benefits from dues recoverability. Institutions that pay its dues, such as EMM, would lose an incentive to control or negotiate dues if these costs were fully included in rates.

Q. Would you discuss some of the concerns that led to the new rule proceedings in which EEI participated?

A. Yes. I would like to highlight that six United States senators wrote a letter questioning the accuracy of lobbying institutions calculating the non-recoverable and recoverable portions of their dues in rates.[22] Considering that EEI and other similar institutions intervene in environmental regulation proceedings and not all ratepayers support such intervention, the senators felt this could be considered political activity financing through captive ratepayers. Five of the six senators voicing these concerns remain in Congress as of the date of filing this testimony.

Q. Would you please summarize Staff's position?

[19] Federal Energy Regulatory Commission (FERC).
[20] See Schedule NB-s3.
[21] See Schedule NB-s4.
[22] See Schedule NB-s5.

A. Yes. As stated above, EEI is a registered lobbying institution. EEI has inserted itself in court cases and federal rulemaking processes in ways that would add to the cost of service. Staff has shown that EEI's interests have at times been aligned with EMM even against the Commission's rulings in ways that seek to include previously disallowed cost categories into rates.

EMM has requested the Commission to accept EEI's lobbying numbers, asserting without quantification that EEI benefits exist for ratepayers. Staff makes no claim that such benefits do or do not exist. However, if such benefits exist, EMM should be able to better quantify such benefits as the Commission has repeatedly requested. Staff again urges the Commission to continue to disallow all EEI dues from the cost of service.

PAYROLL CAPITALIZATION RATIO

Q. On page 9 of their rebuttal testimony, Witness Kramer disagrees with Staff's payroll capitalization ratio. What is the capitalization ratio in relationship to payroll wages annualization calculation and what is its significance?

A. The capitalization ratio is calculated as one minus the O&M[23] ratio. The O&M ratio is calculated as expensed wages divided by total wages represented as a percentage. This percentage is reflected in the cost of service in normalized wages for EMM. Normalized wages represent tens of millions of dollars in the cost of service and even one percentage point difference in the O&M ratio can represent millions in annual collections from ratepayers.

[23] Operations & Maintenance Expenses (O&M).

Q. Does EMM Witness Kramer agree with the rate Staff used?

A. No. In rebuttal testimony Witness Kramer took issue with using the most recent 12-month period O&M rate available, which was December 31, 2025, in Staff's direct filing and the 12-month period ending June 30, 2026, in Staff's True-Up filing.[24]

Q. What does Witness Kramer propose?

A. Witness Kramer proposes the Commission adopt a multi-year average to, "smooth out periods that are higher and lower over historical norms."[25] EMM states that an average of the two years ending June 2025 and June 2026 would be acceptable if the Commission disagrees with EMM's proposed average of three distinct year periods.[26] The three years proposed to be included in the average are, "12 months ending December 31, 2023, 12-months ending December 31, 2024, and the True-Up period 12-months ending June 30, 2026."[27]

Q. If fluctuations needed to be smoothed, did Witness Kramer provide data to support the idea that a three-year average is better than a two-year average?

A. No. Witness Kramer's rebuttal does not offer numerical data comparing these positions. The reasoning given was, "EMM has historically applied a three-year average, very similar to how other payroll items like overtime and temp labor are calculated."[28]

[24] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 9, lines 4-5.
[25] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 9, lines 17-20.
[26] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 10, lines 22-23, and page 11, lines 1-5.
[27] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 10, lines 15-18.
[28] *Rebuttal of Darcie Kramer*, ER-2026-0143, page 9, lines 18-20.

Q. Does the data submitted to Staff support that the O&M rate frequently fluctuates up and down?

A. No. In fact, the opposite is true. EMM's O&M rate used in Staff's wage annualization shows each calendar year end O&M rate decreasing since 2018. Furthermore, the data submitted through the end of the true-up period shows this downward trend remains uninterrupted. See historical O&M rates in Figure 1 below.[29]

Historical O&M Rates (Figure 1)[30]		
Period Ending	O&M Ratio	Rate of Change
Dec 2018	73.32%	-
Dec 2019	71.25%	-2.07%
Dec 2020	64.40%	-6.85%
Dec 2021	**63.66%**	-0.74%
Dec 2022	61.07%	-2.59%
Dec 2023	59.07%	-2.00%
Dec 2024	57.90%	-1.17%
Dec 2025	57.39%	-1.85%
Jun-26	**55.04%**	-2.35%

Q. What could be the impact on the cost of service if EMM's proposed ratio was adopted?

A. Customers would pay millions of dollars per year in excess of what EMM pays to its workforce. EMM's request to use a multi-year average rate which

[29] Company Response to Staff DR 0035 in ER-2026-0143, ER-2024-0129 Staff True-Up O&M workpaper.
[30] Historical O&M Note: The O&M payroll rates shown here includes both EMM's share of the Wolf Creek Nuclear Operating Company's ("WCNOC") payroll costs and Missouri Metro amounts.

is 2.1-2.3 percentage points greater than Staff's proposed rate. This would increase the cost of service more than $5 million per year at June 30, 2026, base wage levels.

Q. Would you like to add anything further?

A. Yes. The $5 million figure above does not include the impact of regulatory lag. The average annual decrease in EMM's O&M rate since 2018 is 2.45 percentage points and the average decrease in the past three years is more than 1.6 points. If that long-term trend continues, Staff's O&M ratio may already be considered higher than the actual O&M ratio that EMM will incur.

Q. What does Staff recommend in the present case?

A. Staff maintains that using the most recent O&M rate through the end of the True-Up period, June 2026, is the most appropriate method to calculate normalized wage expense.

TRUE-UP DIRECT

Q. What True-Up adjustments are you sponsoring?

A. Staff has made corrections and updates to its calculations through the True-Up period ended June 30, 2026, for the following items:

- Payroll
- Payroll Taxes
- Payroll Benefits, 401(k)
- Payroll Incentive Compensation
- Property Taxes
- Time of Use Education Costs

- AMI Meters O&M
- Electrified Assets
- DSM Program and Opt-Out Costs
- Prospective Tracker

Please see below for any updates not related to corrections or updated data.

PAYROLL WAGE ANNUALIZATION

Q. Has Staff made any changes to its methodology for payroll wage annualization?

A. No. Staff proposes using a four-year average of the most recent 12-month periods to determine overtime expenses, calendar years ending 2022, 2023, and 2024 and the 12 months ending June 30, 2026. Staff included the most recent 12-month period to reflect the most recent costs available in the cost of service.

PAYROLL INCENTIVE COMPENSATION

Q. What updates does Staff propose to its direct filing for payroll incentive compensation related adjustments?

A. Staff will use a 5% amortization rate for short-term capitalized incentive compensation as EMM suggested in Witness Branson's rebuttal testimony. Staff will not be applying the capitalization rate to power marketing incentives as the Power Marketing plan documents show that this incentive plan is O&M only with no relationship to plant per EMM's response to Staff DR 0098.

ELECTRIFIED ASSETS

Q. What does Staff propose to add to its direct filing for electrified assets (i.e. charging infrastructure)?

A. Staff has included calculated adjustment using data through the True-Up period pursuant to the Report and Order from Case No. ET-2021-0151 allowing EMM to defer costs associated with the Electrification Pilot Program and recover these costs through amortization in rates.

Q. Does this conclude your surrebuttal / true-up direct testimony?

A. Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement a General Rate Increase for Electric Service	))))	Case No. ER-2026-0143

AFFIDAVIT OF NATHAN BAILEY, CPA

STATE OF MISSOURI)
) ss.
COUNTY OF Jackson)

COMES NOW NATHAN BAILEY, CPA and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal / True-Up Direct Testimony of Nathan Bailey, CPA*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

Nathan Bailey

NATHAN BAILEY, CPA

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Jackson, State of Missouri, at my office in Kansas City, on this 3rd day of September 2026.

CHERYL LEVERETTE
MY COMMISSION EXPIRES 9-7-2027
NOTARY SEAL
#01404338
JACKSON COUNTY
NOTARY PUBLIC, STATE OF MISSOURI

Cheryl Leverette

Notary Public

KCPL GMO
Case Name: 2016 GMO Rate Case
Case Number: ER-2016-0156

Response to Taylor Jason Interrogatories - MPSC_20160818
Date of Response: 8/26/2016

Question:0445

1) Please provide all invoices from EEI since January 2014 through the present for Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations Company (GMO). 2) Please provide all correspondences with EEI since January 2014 through the present. 1) Reference GMO's appeal to the Supreme Court of the United States, Case No. 13-787. Did KCPL, GMO, or any of its representatives, request EEI to file an Amicus Brief in support of GMO? Did KCPL, GMO, or any of its representatives assist EEI in developing its Amicus Brief? DR requested by Jason Taylor Jason.taylor@psc.mo.gov.

Response:

1.) Yes, KCP&L requested EEI consider filing an Amicus Brief in Case No. 13-787.
2.) KCP&L did not assist EEI in developing its Amicus Brief.
3.) Please see attachments below to view each EEI voucher from 2014 – current.

Prepared by: Melissa Tye, Corporate Planning and Budget

Attachments:
Q0445_R0370967.pdf
Q0445_R0386604.pdf
Q0445_R0415475.pdf
Q0445_R0425103.pdf
Q0445_R0485020.pdf
Q0445_R0485541.pdf
Q0445_R0497501.pdf
Q0445_R0504292.pdf
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No. 13-787

IN THE

Supreme Court of the United States

STATE OF MISSOURI, *EX REL.* KCP&L GREATER MISSOURI OPERATIONS COMPANY,

Petitioner,

v.

MISSOURI PUBLIC SERVICE COMMISSION AND DOGWOOD ENERGY, LLC,

Respondents.

On Petition for a Writ of Certiorari to the Missouri Court of Appeals, Western District

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF *AMICUS CURIAE* EDISON ELECTRIC INSTITUTE IN SUPPORT OF PETITIONER

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MOTION OF ELECTRIC EDISON INSTITUTE FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Rule 37.2(b) of the Rules of the Supreme Court of the United States, Edison Electric Institute (EEI) hereby respectfully moves for leave to file the accompanying brief as *amicus curiae* supporting the petition in this case. Timely notice under Rule 37.1(a) of intent to file this brief was provided to the Petitioner and the Respondents. Petitioner KCP&L Greater Missouri Operations Company has consented to the filing of this brief. Respondents Missouri Public Service Commission (Missouri Commission) and Dogwood Energy, LLC have withheld consent.

EEI is the national association of U.S. shareholder-owned electric utilities, their affiliates, and industry associates worldwide. Its members provide electricity in fifty States and the District of Columbia. They generate approximately seventy percent of all electricity generated by electric companies and serve about seventy percent of all retail customers in the Nation. They own about sixty percent of transmission lines in the country. EEI members are extensively regulated at both the federal and State levels.

In providing electricity to retail customers nationwide, EEI's members rely on a broad array of electricity generation, transmission, and distribution facilities and must recover the costs of these facilities, including in this case their transmission costs, in their rates.

Today the electric utility industry is undergoing a significant and expensive transformation as a number of generating plants retire and new generating plants are built in locations that tend to be farther removed from consumers. This places increased reliance on transmission infrastructure, further highlighting the importance of being able to recover transmission costs.

In this case, where the total cost of electricity from a Mississippi plant (the Crossroads plant) was lower than the total cost of any other option, taking transmission into account, the Missouri Commission held that Petitioner had prudently chosen to obtain power from the Mississippi plant. However, the Missouri Commission refused to allow Petitioner to recover the cost of transmitting the power from that plant to customers in Missouri. These transmission costs—which amount to at least $5,000,000 annually for approximately 20 years—had previously been approved by the Federal Energy Regulatory Commission (FERC) as "just and reasonable." The Missouri Commission's decision, upheld by the Missouri courts, treated the transmission costs as optional, but they are not.

As a result, the Missouri Commission and courts created, in essence, a loophole to the filed rate doctrine and a brand new exception to the Supremacy Clause. Given the recurring nature of this issue, EEI is concerned with the risk that the Missouri decisions pose for the recovery by EEI's members nationwide of billions of dollars of costs incurred in connection with the interstate transmission of electricity, particularly in light of the industry's growing reliance on long-distance transmission to deliver electricity from renewable sources of energy and new plants operating near new low cost sources of natural gas.

In view of its interest and unique perspective on these issues, EEI respectfully requests that the Court grant EEI leave to participate as *amicus curiae* by filing the accompanying brief in support of the petition for writ of certiorari.

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE* EDISON ELECTRIC INSTITUTE IN SUPPORT OF PETITIONER

QUESTION PRESENTED

Whether a State violates the filed rate doctrine and the Supremacy Clause when it traps federally-approved transmission charges for an interstate electricity purchase that the State itself found prudent.

INTEREST OF *AMICUS CURIAE*[1]

Edison Electric Institute (EEI) is the national association of U.S. shareholder-owned electric utilities, their affiliates, and industry associates worldwide. Its members provide electricity in fifty States and the District of Columbia. They generate approximately seventy percent of all electricity generated by electric companies and serve about seventy percent of all retail customers in the Nation. They own about sixty percent of transmission lines in the country. EEI members are extensively regulated at both the federal and State levels.

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

EEI has an interest in this case because the case presents a recurring issue that is associated with billions of dollars of investment by EEI members. EEI members routinely engage in integrated resources planning, which evaluates the costs of relying on locally-generated electric power versus power generated further from customers. A utility's decision as to which generating sources to use focuses on identifying the lowest total cost of generating, transmitting, and distributing the electricity that its customers need. This necessarily takes into account factors such as anticipated fuel supply and transportation/transmission cost options, as well as reliability and other factors.

State utility commissions typically have a significant voice in the process, as they must ultimately approve retail rates to recover the costs. But the Federal Energy Regulatory Commission (FERC) plays an important and exclusive role in approving the interstate transmission and wholesale power component of those rates.

Ultimately, all the prudently incurred costs of providing electricity must be recovered from retail customers, with States passing through FERC-approved transmission and wholesale rates, or electric utilities cannot continue to depend on energy sources that involve interstate transmission and interstate wholesale purchases. The end result of disallowing recovery of transmission costs, as the Missouri Public Service Commission (Missouri Commission) and courts have done here, will be higher costs to electricity consumers, as utilities will have to depend on local generating plants even if their total costs are more expensive than more remote plants.

The evaluation of local versus distant power sources is becoming increasingly important as regional markets expand, new low cost sources of natural gas are developed, and federal and state policymakers encourage purchases from new plants and distant renewable energy resources. EEI's members cannot maintain their financial health, and thereby deliver reliable and economic service to consumers, if FERC-approved transmission costs for interstate trade are disallowed, or "trapped," by State utility commissions.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Missouri Commission held that importing generation from another State was prudent because it saved local consumers money, even after taking transmission costs into account. But the Commission excused those customers from paying for the interstate transmission necessary to deliver that power. Pet. App. 67a, 78a. The Missouri Court of Appeals affirmed, holding that Missouri can deny recovery of FERC-approved transmission costs any time it objects to the "concept" of paying those costs. *Id.* at 17a.

Missouri's transparent attempt to "trap" federally-approved costs by prohibiting their recovery in retail rates is unlawful and undermines FERC's comprehensive regulation of interstate wholesale electric markets. FERC has long required that transmission-related services be unbundled (*i.e.*, sold separately) from generation in order to facilitate open access for transmission customers and competitive electricity markets. See *New York* v. *FERC*, 535 U.S. 1 (2002).

Recognizing the inherently interstate nature of the grid, FERC has also supported regional electric markets operated by independent entities and required new transmission investment to be planned on a regional basis. These reforms share a common purpose: to achieve a more efficient use of generation resources over the Nation's interstate transmission grid.

This comprehensive federal regulatory scheme will be destroyed, however, if States are allowed to cherry-pick which FERC-regulated costs they pass on to consumers. And the fabric of regional electricity markets will be irreparably torn if States can access lower-cost generation from another State—such as wind generation from locations far from densely populated areas or low cost natural gas developed at new gas fields—but refuse to pass through to consumers the cost of transmitting that energy. Interstate trade cannot survive in a market where customers can purchase goods from another State without paying the costs of transporting them.

The disruption associated with Missouri's newly-minted loophole in the filed rate doctrine is particularly severe given the enormous investment challenges presently confronting the electric utility industry. The electric utility industry faces unprecedented transmission capital investment demands over the next decade to replace aging infrastructure, to comply with environmental regulations, to enhance the reliability and security (physical and cyber) of the grid, and to integrate renewable resources and new natural gas plants. These investments are critical to interstate trade and to the integration of a cleaner fleet of generation resources. These investments cannot be made in a regulatory climate that permits a State to disallow transmission charges whenever it objects to the "concept" of paying for interstate transmission.

The Missouri loophole is also uniquely positioned to spread like a virus to other States. Just as electric utilities must routinely evaluate their generation purchase options by comparing a broad range of sources, including out-of-state purchases, state public service commissions must routinely consider whether to grant recovery of the associated costs of those options. Any exception to the filed rate doctrine created by one State to shed unwanted costs will necessarily attract a following from other States. The so-called "*Pike County*" exception to the filed rate doctrine—an intermediate State court decision that was subsequently adopted almost uniformly by other States—is the perfect example. See *Pike Cnty. Light & Power Co.* v. *Pa. Pub. Util. Comm'n*, 465 A.2d 735 (Pa. Commw. Ct. 1983).

This Court, recognizing this danger, has intervened three times to overturn collateral state courts' attacks on FERC's exclusive jurisdiction. *Entergy La., Inc.* v. *La. Pub. Serv. Comm'n*, 539 U.S. 39 (2003); *Miss. Power & Light Co.* v. *Miss. ex rel. Moore*, 487 U.S. 354 (1988); *Nantahala Power & Light Co.* v. *Thornburg*, 476 U.S. 953 (1986). The Court should do so here before Missouri's novel theory is adopted by other States and thereby inflicts irreparable damage on the Nation's interstate wholesale electricity markets.

ARGUMENT

KCP&L Greater Missouri Operations Company (the Company) sought recovery of the generation and transmission costs of importing electricity from a plant in Mississippi because that was the most economic option for its customers. The imports from the Mississippi plant included a FERC-approved transmission charge that was more expensive than the transmission cost for the local supply options. But the option was economic because the total cost of power from the plant, including generation and transmission costs, was less than the total cost of the local supply options. Pet. 6.

The Missouri Commission agreed that the Mississippi plant was the right choice for local consumers (*id.* at 7; Pet. App. 67a, 75a-77a). Nonetheless, the Commission disallowed the FERC-approved transmission costs because it deemed them "excessive" and "not just and reasonable." *Id.* at 63a-64a, 78a.

The Missouri Court of Appeals affirmed. The Missouri court refused to apply the uniform rule against trapping FERC-approved costs because, notwithstanding the plain text of the Missouri Commission's order, the court found the Commission's disallowance "had nothing to do with whether the transmission rates * * * [were] just and reasonable." Pet. App. 16a. Rather, according to the court, the Missouri Commission merely objected to "the *concept* of requiring ratepayers to pay for any Crossroads transmission costs in the first place," not "the *amount* of Crossroads transmission costs." *Id.* at 17a (emphasis added).

This Court should grant the petition for writ of certiorari because Missouri has carved a loophole in the filed rate doctrine that will eviscerate FERC's comprehensive regulation of interstate transmission and unravel interstate electricity markets.

I. Missouri's Decision Collaterally Attacks the Foundation of Interstate Electricity Markets: the Transmission Necessary to Deliver Interstate Generation

The foundation for interstate electricity markets is FERC's requirement that every public utility provide nondiscriminatory transmission access to generators on an unbundled basis. "In the bad old days, utilities were vertically integrated monopolies" that "bundled" their services, such that "consumers paid a single price for generation, transmission, and distribution." *Midwest ISO Transmission Owners* v. *FERC*, 373 F.3d 1361, 1363 (D.C. Cir. 2004) (Roberts, J.). "Competition * * * was not prevalent." *New York*, 535 U.S. at 5.

FERC transformed this structure in 1996 when it issued its landmark rule ordering every public utility to provide open access transmission service to "ensure that customers have the benefits of competitively priced generation." *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,635-36, 31,652 (1996). The indispensable element of Order No. 888 was the requirement that transmission be "unbundled" for wholesale generation sales—*i.e.*, "requiring each utility to state separate rates for its wholesale generation, transmission, and ancillary services, and to take transmission of its own wholesale sales and purchases under a single general tariff applicable equally to itself and to others." *New York*, 535 U.S. at 11; see also Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,654. This ensured that utilities could no longer "refuse to deliver energy produced by competitors or to deliver competitors' power on terms and conditions less favorable than those they apply to their own transmissions." *New York*, 535 U.S. at 8-9.

While Order No. 888 opened the interstate grid to competition, FERC soon found that "independent regionally operated transmission grids [would] enhance the benefits of competitive electricity markets." *Regional Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,993 (1999). FERC thus encouraged every public utility to join a regional transmission organization (RTO) or justify its failure to do so. *Id.* at 31,033-34. "[B]y improving efficiencies in the management of the grid, improving grid reliability, and removing any remaining opportunities for discriminatory transmission practices, the widespread development of RTOs will improve the performance of electricity markets in several ways and consequently lower prices to the Nation's electricity consumers." *Id.* at 31,025. FERC has since adopted numerous reforms to strengthen these regional markets, finding it "has a duty to improve the operation of wholesale power markets" because "National policy has been, and continues to be, to foster competition in wholesale electric power markets." *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at 30,580 (2008).

FERC has also required every region to adopt transmission planning and cost allocation rules that recognize the interconnected nature of regional electric markets. See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011); *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 30,956 (2007). These regional transmission planning reforms were designed, in significant part, to reflect the unique challenges presented by the need to deliver renewable energy from wind-rich areas to distant population centers. See, *e.g.*, *Ill. Commerce Comm'n* v. *FERC*, 721 F.3d 764, 771 (7th Cir. 2013), petition for cert. pending, No. 13-445 (filed Oct. 7, 2013). FERC has even required that every region engage in coordinated transmission planning with each adjoining region to identify cost-effective solutions to manage power flows crossing inter-regional lines. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 31,357.

FERC has also increased its oversight of the interplay between its exclusive jurisdiction over interstate electricity markets and its exclusive jurisdiction over the interstate natural gas pipeline system. The intersection of interstate electric and natural gas markets is growing because of the increasing importance of natural gas as a source of electricity production and, hence, the critical role played by natural gas pipelines in supporting electric grid reliability. See U.S. Energy Info. Admin., *Annual Energy Outlook 2014 Early Release Overview*, at 14 & fig. 13 (Dec. 16, 2013), http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2014).pdf (showing electricity generation from natural gas as a percentage of total generation increased from approximately 16% in 2000 to 30% in 2012, and is expected to account for 35% of generation by 2040).

Recognizing this, FERC has approved multiple recent reforms designed to ensure better coordination of interstate natural gas and electricity markets. See, *e.g.*, *Commc'n of Operational Info. Between Natural Gas Pipelines and Elec. Transmission Operators*, Order No. 787, FERC Stats. & Regs. ¶ 31,350 at 31,962 (2013) (authorizing "interstate natural gas pipelines and public utilities that own, operate, or control" interstate transmission "to share non-public, operational information with each other for the purpose of promoting reliable service or operational planning on either the public utility's or pipeline's system."); *ISO New England Inc.*, 143 FERC ¶ 61,065 (2013) (approving proposal to alter New England energy market bidding deadlines to improve coordination between the gas and electric markets).

These landmark reforms fall within FERC's *exclusive* jurisdiction. The Federal Power Act grants FERC "exclusive authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce." *New England Power Co.* v. *New Hampshire*, 455 U.S. 331, 340 (1982). Congress thereby drew a "bright line easily ascertained, between state and federal jurisdiction," *FPC* v. *S. Cal. Edison Co.*, 376 U.S. 205, 215 (1964), such that "States may not regulate in areas where FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates or to insure that agreements affecting wholesale rates are reasonable." *Miss. Power & Light*, 487 U.S. at 374; see also *id.* at 377 (Scalia, J., concurring) ("It is common ground that if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject.").

Missouri therefore had no power to disallow the FERC-approved transmission charges incurred by the Company to deliver power from Mississippi. Under the filed rate doctrine, "the right to a reasonable rate is the right to the rate which [FERC] files or fixes, and * * * except for review of [FERC's] orders, the courts can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one." *Mont.-Dakota Utils. Co.* v. *Nw. Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951). The necessary corollary to this rule is that States may not trap FERC-approved costs: "interstate power rates filed with FERC or fixed by FERC must be given binding effect by state utility commissions determining intrastate rates." *Entergy*, 539 U.S. at 47 (quoting *Nantahala*, 476 U.S. at 962). Therefore, "a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable." *Nantahala,* 476 U.S. at 966. "Such a 'trapping' of costs is prohibited." *Id.* at 970.

Missouri's action not only conflicts with the filed rate doctrine by forcing the Company to absorb FERC-approved costs, but undermines FERC's comprehensive regulation of the field of interstate transmission. FERC cannot effectively regulate the interstate grid or interstate electricity markets—its policies in both areas being designed to benefit consumers in *all* affected states—if individual states are free to skew investment decisions towards local sources of power by rejecting FERC-approved costs. "[U]nbundled interstate transmissions of electric energy have never been 'subject to regulation by the States.'" *New York*, 535 U.S. at 21 (quoting 16 U.S.C. 824(a)). Rather, when it comes to interstate transmission arrangements, "[o]nly FERC, as a central regulatory body, can make the comprehensive public interest determination contemplated by the [Federal Power Act] and achieve the coordinated approach to regulation found necessary in *Attleboro*." *Appalachian Power Co.* v. *Pub. Serv. Comm'n*, 812 F.2d 898, 905 (4th Cir. 1987); see also *Pub. Utils. Comm'n* v. *Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927). "[W]hen Congress has established an exclusive form of regulation, 'there can be no divided authority over interstate commerce.'" *Ark. La. Gas Co.* v. *Hall*, 453 U.S. 571, 580 (1981) (quoting *Mo. Pac. R.R. Co.* v. *Stroud*, 267 U.S. 404, 408 (1925)). The Missouri loophole unlawfully erects a strong new barrier to interstate trade to replace those that FERC has labored for the last two decades to eradicate, and the consequence will be a return to the costly inefficiencies that such barriers produce.

II. The Threat to Interstate Trade Posed by the Missouri Loophole Is Enormous

The benefits to consumers and the environment from FERC-regulated interstate electricity markets will be lost if the very transmission infrastructure costs necessary to support those markets cannot be recovered in retail rates. Electric utilities continually evaluate generation options by comparing the cost of locally-generated power with the cost of power that they can generate or purchase elsewhere—a comparison that necessarily must take into account differences in transmission costs. See Susan F. Tierney & Todd Schatzki, Nat'l Ass'n of Regulatory Comm'rs, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices*, at 40-43 (July 2008) (*Competitive Procurement*). If an out-of-state generation resource is determined to be more economic even if it involves additional transmission costs, consumers will benefit from the electric utility importing power from an out-of-state resource. Yet Missouri has now replaced that rational cost comparison with a parochial (and ultimately self-defeating) rule that allows consumers to take advantage of out-of-state resources without paying the costs of delivering them.

Interstate trade cannot occur in such an environment, and the dangers posed by the Missouri loophole could not be greater given the enormous challenges facing the electric utility industry. "The electric industry in North America is on the brink of one of the most dynamic periods in its history." N. Am. Elec. Reliability Corp., *Special Report: Accommodating High Levels of Variable Generation*, at iv (Apr. 2009).[2] The industry is expected to invest over $150 billion between 2012 and 2020 to replace aging infra-

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[2] The North American Electric Reliability Corporation is certified as the Electric Reliability Organization for the United States pursuant to 16 U.S.C. 824o(c). See *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062 (2006). As the certified Electric Reliability Organization, it is responsible for "oversee[ing] the reliability of the United States' portion of the interconnected North American Bulk-Power System" and "developing and enforcing the mandatory Reliability Standards." *Rules Concerning Certification of the Elec. Reliability Org.*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at 30,111 (2006).

structure and construct a modern, cleaner fleet of generation resources. See, *e.g.*, Gregory Aliff, Deloitte Ctr. for Energy Solutions, *The Math Does Not Lie: Factoring the Future of the U.S. Electric Power Industry*, at 4 (2012) (*The Math Does Not Lie*). Investor-owned electric utilities plan to invest more than $51.1 billion in new transmission projects alone through 2023. EEI, *Transmission Investment: Adequate Returns and Regulatory Certainty Are Key*, at 6 (June 2013).

A significant portion of this investment is to interconnect renewable resources located far from load centers and new natural gas generation. Dan Eggers et al., Credit Suisse, *The Transformational Impact of Renewables,* Americas/U.S. Equity Research, Electric Utilities, at 35 (Dec. 20, 2013) ("Renewables (and wind in particular) are often built in locations far from population centers" and therefore "require more transmission infrastructure investment to deliver the renewables to market."); Matthew L. Wald, *Wind Energy Bumps Into Power Grid's Limits*, N.Y. Times, Aug. 27, 2008, at A1 ("Achieving [a 20% renewable energy quota] would require moving large amounts of power over long distances, from the windy, lightly populated plains in the middle of the country to the coasts where many people live. * * * The grid's limitations are putting a damper on such projects already."); Johannes Pfeifenberger, The Brattle Group, *Transmission Investment Trends and Planning Challenges*, at 6 (Aug. 8, 2012), http://www3.eei.org/meetings/Meeting%20Documents/2012-08-06-TransmissionWholesaleMarketsSchool-Pfeifenberger.pdf (projecting $50-100 billion in nationwide incremental transmission needed to integrate renewables).

One of the immense challenges posed by this new fleet of generation resources is the need to expand the interstate transmission grid to reach the optimal sites for locating renewable energy resources. Consequently, every affected region is, using FERC's regional planning reforms, considering how to meet the challenge of integrating remote generation in the most cost-effective fashion for consumers. The Midwest regional grid operator has already approved over $5 billion in transmission facilities to reach "the best sites in its region for wind farms that will meet the region's demand for wind power." *Ill. Commerce Comm'n*, 721 F.3d at 771; see Midcontinent Indep. Sys. Operator, Inc., *MISO 2013 Transmission Expansion Plan*, at 16, 19 (2013). The Southwest Power Pool has already approved approximately $1.4 billion in transmission projects designed to facilitate the addition of new renewable and non-renewable generation. Sw. Power Pool, *2013 SPP Transmission Expansion Plan Report*, at 4, 18 (Jan. 29, 2013). And the regional planner serving all the Western States has identified thousands of line miles in new transmission projects that can allow the region to more economically meet its renewable portfolio standards. Scott Haase et al., Nat'l Renewable Energy Lab., *Western Region Renewable Energy Markets: Implications for the Bureau of Land Management*, Technical Report NREL/TP-6A20-53540, at 28-30 (Jan. 2012).

Missouri's cherry-picking theory of preemption, however, places these extraordinary regional efforts at risk because it allows States to pick and choose the cheapest *generation* resource without regard to the cost of *transmission* to deliver it. The issue of who should pay for these new regional transmission projects is, by definition, contentious: transmission "cost allocation and reform is one of the most difficult issues facing transmission service providers and regional transmission organizations." *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 at P 2 (2010), order on reh'g, 137 FERC ¶ 61,074 (2011). It should therefore not be surprising that, in most regions that have implemented FERC's reforms, there have been disputes—often among affected States—over how the interstate transmission grid costs to reach such remote resources should be allocated. *Ill. Commerce Comm'n*, 721 F.3d 764 (considering State challenges to the Midwest region's cost allocation method); *Ill. Commerce Comm'n* v. *FERC*, 576 F.3d 470 (7th Cir. 2009) (considering State challenges to the Mid-Atlantic region's cost allocation method). These disputes fall within FERC's exclusive jurisdiction to resolve. But Missouri has now provided the States with a ready escape hatch: if they say that they disagree with the "concept" of paying FERC-allocated transmission costs, they can disallow them and still realize the benefits of importing low cost power from remote resources. Ultimately, this will lead to decisions not to use cheaper, more environmentally friendly remote resources, because utilities will not employ resources if they cannot recover the associated costs.

A similar problem is presented by the locational trade-offs presented by other generation resources, such as new natural gas-fired generation. Natural gas-fired generation is estimated to comprise between 40% and 80% of new supply additions over the next thirty-five years. U.S. Energy Info. Admin., *Annual Energy Outlook 2013 With Projections to 2040*, at 72 (Apr. 2013). The cost of developing these resources differs significantly based on location, particularly with respect to proximity to natural gas pipelines and proximity to the high-voltage electric grid. Indeed, one of the reasons that the Crossroads plant was the lowest cost resource for the Company was because it was situated on a gas pipeline that had access to less expensive gas. Pet. App. 62a ("[T]he average delivered cost of natural gas to Crossroads was about half the average delivered cost of natural gas to [the location of a potential alternative plant in Missouri]."). Consumers will benefit if these tradeoffs are considered rationally, not through parochial state decisions that—as in this case—cherry-pick the energy benefits that come from being close to a natural gas pipeline yet disallow the cost of electric transmission service.

The Missouri loophole also threatens much more than efficient generation resource procurement. FERC regulates a slate of transmission-related services that are unbundled, including congestion charges to reflect the value of transmission when the system is constrained, line losses associated with transporting energy long distances, and "ancillary" services necessary to balance the grid on a moment-to-moment basis. See *Black Oak Energy, LLC* v. *FERC*, 725 F.3d 230 (D.C. Cir. 2013); *Sacramento Mun. Util. Dist.* v. *FERC*, 616 F.3d 520, 524 (D.C. Cir. 2010) (locational marginal energy prices include "(i) the cost of generation; (ii) the cost of congestion; and (iii) the cost of transmission losses"); Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705 (requiring unbundling of ancillary services that are needed to "maintain[] reliability within and among control areas affected by the transmission service").

All these charges are prey to Missouri's "buffet-style ratemaking." Pet. 14, 29. Consider just two prime examples. First, congestion charges have long been controversial. See, *e.g.*, *Sacramento Mun. Util. Dist.* v. *FERC*, 474 F.3d 797 (D.C. Cir. 2007); *Sacramento Mun. Util. Dist.* v. *FERC*, 428 F.3d 294 (D.C. Cir. 2005). States now have a ready option to trap them. Using the very same theory adopted by Missouri, a State could find that an electric utility was prudent in purchasing lower-cost generation from outside a constrained area, but nonetheless disallow the congestion charges required to deliver that energy across the constraint because the State disagreed with the concept of recovering those costs.

Second, transmission line loss charges are susceptible to the same theory. See generally *Black Oak Energy*, 725 F.3d at 235 (noting controversy over the over-recovery of transmission losses). These charges represent an unavoidable cost of delivering power over long distances due to resistance (*i.e.*, Ohm's law). "[L]osses are a function of 'the amount of the current flowing on the wire[,] * * * the resistance it encounters,' and the distance it travels." *Id.* at 234 (quoting *Sithe/Independence Power Partners, L.P.* v. *FERC*, 285 F.3d 1, 2 (D.C. Cir. 2002)). Using Missouri's theory, however, a State could find that purchasing generation from an out-of-state source was reasonable, but disallow the cost of transmission losses associated with transporting that energy.

Finally, there is nothing unique in Missouri's rate recovery *procedures* that would stop its preemption theory from spreading to other States. Although FERC has exclusive jurisdiction over unbundled charges for interstate transmission and wholesale generation, state public service commissions determine whether and when these charges can be recovered from retail customers. See, *e.g.*, David Boonin, Nat'l Regulatory Research Inst., *Aligning a Utility's Interests with the Public Interest in Cost-Effective Purchased Power Transactions* (Apr. 6, 2009), http://www.nrri.org/pubs/electricity/NRRI_purchased_power_alignment_tools_apr09-05.pdf. This state-level review can, as here, focus primarily on various generation resource options. See *Sw. Elec. Power Co.*, Application for Certification of a Contract for the Purchase of Capacity, La. Pub. Serv. Comm'n Docket No. U-29702 (July 24, 2006) (considering the cost of transmission services to deliver various generation options); *Sw. Elec. Power Co.*, Petition for Declaratory Order, Ark. Pub. Serv. Comm'n, Docket No. 12-008-U (Feb. 8, 2012) (considering the cost of delivery from third-party purchase power alternatives).

But that review need not be so specific for the Missouri loophole to come into play. The costs of new generation, as well as every other cost (including FERC-approved transmission costs), are routinely considered in "rate cases" in which the States review the reasonableness of *all* charges. See, *e.g.*, Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* § 9.2 (Mar. 2011) (*Electricity Regulation*), www.raponline.org/document/download/id/645; Karl McDermott, EEI, *Cost of Service Regulation in the Investor-Owned Electric Utility Industry*, at 8-12 (June 2012) (*Cost of Service Regulation*). The temptation to "trap" costs approved by another regulator (FERC) in these cases is obvious and growing every day: the enormous capital investments being made by the industry are creating a spiral of ever-increasing electricity rates to consumers. *The Math*

Does Not Lie at 9. Even in States that use selective "riders" to allow recovery of charges outside the normal rate case process, *Cost of Service Regulation* at 39; *Electricity Regulation* at 69-72, utilities must still take initial action in the state commissions to request approval to recover FERC-jurisdictional charges from retail consumers. The Missouri loophole can therefore spread to every State and infect any ratemaking procedure.

EEI is not contending that States have no authority over decisions made by their jurisdictional electric utilities that relate to interstate markets. For example, in exercising jurisdiction over retail sales, a State may lawfully establish procedures for considering the most economic generation resource to serve retail customers (*e.g.*, through competitive solicitations or integrated resource planning). See *Electricity Regulation* at 73-76 (describing integrated resource planning to review investments before they are made); *Competitive Procurement* at 10-46 (describing competitive solicitations for new resources). It can also be assumed that a State might consider the prudence of the quantity of a FERC-regulated power purchase. *Nantahala*, 476 U.S. at 972 ("Without deciding this issue, we may assume that a particular *quantity* of power procured by a utility from a particular source could be deemed unreasonably excessive if lower cost power is available elsewhere, even though the higher cost power actually purchased is obtained at a FERC-approved, and therefore reasonable, *price*."). What the States may not do, however, is what Missouri did here: find that an out-of-state generation resource is economic, but cherry-pick out the FERC-regulated costs for disallowance. "Such a 'trapping' of costs is prohibited." *Id.* at 970.

CONCLUSION

FERC's regulation of interstate markets cannot succeed, and the transformational changes confronting the electric utility industry cannot be successfully managed, if states are free to disallow FERC-approved charges any time they disagree in "concept" with them. The Court should grant the petition for writ of certiorari.

Respectfully submitted,

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February 3, 2014

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses	)))	Docket No. RM 22-5-000

INITIAL COMMENTS OF THE EDISON ELECTRIC INSTITUTE

I. INTRODUCTION

Pursuant to the Federal Energy Regulatory Commission's ("FERC's" or Commission's") December 16, 2021, Notice of Inquiry ("NOI"), the Edison Electric Institute ("EEI") respectfully submits these Comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses.[1] The Commission also seeks comments on whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare programs. EEI submits the following in response to these questions and appreciates the opportunity to address the Commission's requests and to inform the Commission about matters related to our dues and spending.

EEI is the association that represents all shareholder-owned electric utilities in the United States, regardless of how they are structured. Our members provide electricity for more than 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than seven million jobs in communities across the United States. EEI's members also are committed to getting the electricity they provide customers as clean as they can as fast as they can, keeping affordability and reliability front and center.

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[1] *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Notice of Inquiry, Docket No. RM22-5-000 (Dec. 6, 2021) ("NOI").

"The business of transmitting and selling electric energy for ultimate distribution to the public is affected with the public interest."[2] In furtherance of the public interest and consistent with the Federal Power Act, EEI's member companies are among the most regulated companies in the country. Compliance with the full suite of economic, financial, reliability, and health and safety regulations are the driver for all of their civic and political engagement and why electric companies formed a trade association in 1933 to help them navigate this landscape, individually and collectively.

How electric companies serve the public—and their business model—is a function of how they are regulated. Accordingly, participation in the development of new legislation and regulations and in regulatory proceedings is both appropriate and necessary. Neither EEI nor its members consider the NOI to suggest anything to the contrary. And, indeed, such participation is even more critical at this unique moment in time, which is witness to a clean energy transformation and which requires the full participation of all stakeholders in the key legislative and regulatory decisions that will have significant implications for the future. EEI member electric utilities are proud to lead this clean energy transition and engage with all stakeholders in this joint effort to make the clean energy future a reality. Unlike single issue groups, electric utilities and their trade associations participate in these proceedings cognizant of the importance of balancing multiple goals in an effort to provide affordable, reliable, and clean electricity to customers.

To help members achieve their clean energy goals, fulfill their regulatory obligations, and serve the public interest, EEI convenes members to assess the direction that legislators and regulators provide and participates in a range of dockets and proceedings open to all stakeholders

[2] Federal Power Act section 201(a), 16 U.S.C. §824(a).

at the state and federal level. At members' direction, our goal is to engage constructively, providing our expertise and collective industry thinking on how proposals may affect the provision of these services to customers. In addition, EEI provides technical and operational assistance to members, including facilitating the industry's unique mutual assistance efforts to restore power after events likes storms, hurricanes, and wildfires.

Consistent with the goals of this NOI, set forth below in detail are the myriad of ways that EEI already fully and carefully complies with all federal and state requirements around its lobbying and advocacy. Additionally, in an effort to further aid the Commission's review and consideration of trade association dues during rate review proceedings, EEI provide further transparency regarding its budget and its spending. Attached as Appendix A is our 2022 Lobbying, Advocacy, and Other Expenditures Report, which also is posted on our website at https://www.eei.org/about/Pages/about.aspx. This new report, which will be updated annually, provides information about our dues, our budget, and our expenditures as approved by our Board of Directors. It also compiles already publicly available information, including annual filings with the Internal Revenue Service ("IRS") that are related to our lobbying activities, so that regulators and others can more easily access them. We encourage all stakeholders in Commission proceedings to provide similar levels of transparency regarding their sources of funding and the objectives of their funders.

II. COMMENTS

The NOI seeks comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. It also seeks comments on whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare programs. Generally, the questions posed throughout the NOI fall into three categories of requests: 1) information on how industry associations dues are accounted for and recovered; 2) information on the types of transparency that exists today around association spending; and 3) information on what if any additional guidance or clarifications are needed.

As a preliminary matter, it is important to note that a very small portion of EEI dues is recovered via FERC-jurisdictional rates. Instead, where permitted, more of EEI's dues are recovered via retail rates approved by state commissions. These state regulators have demonstrated that they are capable of making their own required assessments about the recoverability of trade association dues, as evidenced by the broad spectrum of approaches they have taken to address this issue, and the Commission should avoid taking any action that attempts to dictate to state regulators how to approach this issue in their regulatory proceedings. Demonstrating this diversity of approaches, several states disallow recovery of all trade association dues, some allow recovery of all dues that are not related to lobbying as defined by federal law, and many take positions that permit some but not all recovery.

EEI appreciates the opportunity to address the Commission's requests and to inform the Commission about matters related to our dues and spending. We also take this opportunity to provide information about our activities in service of companies and customers, of which the Commission and other stakeholder may not even be aware, and to correct some assertions regarding EEI activities and purpose made in and in response to the Petition[3] that regrettably made their way into the Commission's NOI. In addition, as noted above, additional details can

[3] Petition For Rulemaking To Amend The Uniform System Of Accounts' Treatment Of Industry Association Dues, Docket No. RM21-15-000 (Mar. 17, 2021) ("Petition").

also be found at Attachment A in our 2022 Lobbying, Advocacy, and Other Expenditures Report.

A. EEI Dues Are Calculated and Reported in Accordance with All Applicable Laws

EEI is a tax-exempt trade association recognized as such by the IRS pursuant to Section 501(c)(6) of the Internal Revenue Code ("IRC") of 1986, as amended. EEI files an exempt organization information return ("Form 990") annually, as required by law, which is a publicly accessible document.[4] Unlike some organizations whose memberships are hidden and whose funding is often obtained from multiple undisclosed sources, occasionally including federal government grants, EEI, like all trade associations, is funded through membership dues. EEI's complete membership list is available on our website: www.eei.org.

EEI member companies pay dues on a sliding scale based on the number of customers they serve, the size of their assets, measured in terms of both generating units and transmission capacity, and the revenues attributed to their electric operations.[5] Our membership includes all investor-owned electric companies in the U.S., which range in size from Fortune 500 companies to smaller regional electric companies. Our annual dues invoices clearly indicate what percentage of member dues relate to lobbying at the state and federal level. In 2019 about 14 percent of dues was used for lobbying and therefore not recoverable through customer rates. In 2020, this amount was 12.4 percent; in 2021, this amount was 14.3 percent.[6] EEI estimates these

[4] *See, e.g.*, https://www.irs.gov/charities-non-profits/tax-exempt-organization-search.

[5] EEI also has associate members. These companies pay much smaller fixed annual dues. The international member program is entirely funded through its own, separate dues. Associate and international member companies attend some EEI meetings and other programs but are not involved in member discussions about domestic legislation, policy, or regulation.

[6] EEI provided this information in response to the Petition but provides updated data here now that 2021 filings are complete.

amounts at the time that dues invoices are issued, usually in November of each year, for the coming year. In January of each year, EEI provides members with an actual lobbying percentage for the previous year based on actual expenditures and filed Lobbying Disclosure Reports.[7]

This advocacy/lobbying portion of EEI's dues, which, as noted, is legally not recoverable through customer rates, is calculated using the Internal Revenue Code ("IRC") definition of "lobbying and political activities" under section 162(e), in addition to the definitions in the Lobbying Disclosure Act, as amended ("LDA"), and as permitted by the LDA. The IRC definition broadly captures not only federal lobbying, but also state and grassroots lobbying and political activity. EEI uses the IRC definition because it is broad, capturing both federal and state-level activities, which is important to members whose retail rates are approved by state public utility commissions.[8] If the Commission is interested in clarifying its regulations to be consistent with federal law, the IRC definition may be a reasonable place to look.

EEI elects to use the broad IRC definition for reporting in its mandatory LDA reports,[9] which are filed quarterly with the Secretary of the Senate and the Clerk of the House of Representatives and are publicly available.[10] Any false statements or concealments in these

[7] These percentages relate to the amount of EEI's core budget, which is funded by dues that all electric company members pay, that was used for lobbying. As noted in our 2022 Lobbying, Advocacy, and Other Expenditures Report, our emerging issues budget also can be used for activities that are considered lobbying under federal law. If members choose to contribute to this fund, which is separate from EEI's core budget, EEI provides those members an estimated and an actual lobbing percentage using the same process as just described.

[8] EEI also opts to use the IRC definition because such amounts are not tax deductible. *See* IRC §§ 162(e); *see also* 26 C.F.R. § 1.162-29. Using the same definition for IRS reporting and for other mandatory lobbying disclosures is reasonable from an accounting and membership perspective and legally permissible. *See* 2 U.S.C. § 1610. Under the law, entities that are required to provide lobbying disclosures are permitted to choose whether to use the LDA definition of lobbying or the combined LDA/IRS definition. As stated, EEI elects the definition that covers more state-level activities, given that EEI members are regulated at both the state and federal level. *See also* n.9, infra.

[9] *See* 2 U.S.C. § 1601 et seq. The LDA definition of lobbying would require EEI to report contacts with the Commission but would exclude any state-level lobbying.

[10] Registrations and reports are available online at the House website, http://lobbyingdisclosure.house.gov, as well as the Senate website, http://www.senate.gov/lobby. Links to EEI's quarterly reports for 2021 can be found in the 2022 Lobbying, Advocacy, and Other Expenditures Report.

reports are federal crimes.[11] In addition, the Government Accountability Office is required by law to audit these reports annually.[12] The U.S. Attorney's Office for the District of Columbia is charged with enforcing the requirements of the LDA and investigates all referrals for non-compliance made by the Secretary of the Senate or the Clerk of the House of Representatives.

When making these reports, EEI compiles the amounts associated with lobbying through a careful accounting process and takes great pains to make sure that these amounts are accurate under the law. This process includes strong internal controls and compliance regimes to track (1) contacts with covered Legislative and Executive Branch officials; (2) time spent preparing to lobby Legislative and Executive Branch officials; and (3) time spent undertaking such activities with other groups. It also includes time spent engaged in state-level legislative lobbying efforts. EEI's calculations are subject to annual internal audits, the results of which are reported to our Board of Directors every June during our Annual Meeting.

The NOI does not address these mandatory federal reporting obligations. In support of the decision to issue this NOI, the Commission instead relies on unsupported assertions made in the Petition that EEI was spending 50 percent of its income on lobbying and advocacy efforts and misrepresenting the amount to members.[13] This is inaccurate. Leaving aside whether such assertions are sufficient evidence that additional transparency is needed with respect to trade association dues, other groups' definition of lobbying are not consistent with federal law. As

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[11] *See* the False Statements Accountability Act of 1996, amending 18 U.S.C. § 1001. In addition, whoever knowingly fails: 1) to correct a defective filing within 60 days after notice of any such defect by the Secretary of the Senate or the Clerk of the House; or 2) to comply with any other provision of this Act may be subject to a civil fine of not more than $200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than five years or fined under Title 18 of the U.S.C. or both. *See* LDA § 1606.

[12] The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended the LDA. Among these changes, HLGOA included a provision for GAO to annually audit the extent of lobbyists' compliance with LDA. *See* Pub. L. No. 110-81, 121 Stat. 735 (Sept. 14, 2007), codified at 2 U.S.C. §1614. 22 U.S.C. GAO's most recent report was published in April 2021, https://www.gao.gov/assets/gao-21-375.pdf.

[13] NOI at P 16 & n.29

noted, EEI complies with all federal laws regarding the reporting of lobbying activities; and, as appropriate, registers as lobbyists in states when and where required to do so.

A cursory review of the "report" cited in the Petition and referenced in the NOI that was developed by the Energy and Policy Institute ("EPI"), a group whose own sources of funding and expenditures are not transparent, quickly uncovers not only the misleading nature of the claim that 50 percent of EEI dues were used for lobbying and advocacy, but also a lack of consistency with FERC's own regulations. In order to manufacture this figure, the report does not limit its calculation to lobbying and political activities as defined by the LDA, the IRC, or even the Commission's own regulations related to Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, which are presumed to be unrecoverable. The Commission's regulations explicitly state that expenses "directly related to appearances before regulatory and other governmental bodies in connection with [a] utility company's existing or proposed operations" should not be included in these unrecoverable amounts.[14] Despite this, the report adds up "legislative activity; regulatory advocacy; advertising; marketing; public relations; legislative policy research; [and] regulatory policy research." Moreover, this report misstates the National Association of Regulatory Utility Commissioner's report on which it purports to rely. Instead, EPI and Center for Biological Diversity ("CBD") have determined their own definition of what should be deemed "political activity."[15]

Federal law dictates how political activity is defined and any changes to that definition must come from Congress. If, as stated in the NOI, the intent of the Commission is to determine

[14] 18 C.F.R. §367.4264(b).

[15] *See* Center for Biological Diversity Petition, Exh. A (Energy and Policy Institute report from May 2017, titled *Paying for Utility Politics: How utility ratepayers are forced to fund the Edison Electric Institute and other political organizations* ("Energy & Policy Institute May 2017 Report")). Neither of these organizations provide any information about their funding, legislative activities, or regulatory advocacy.

if additional transparency, clarity, or guidance is necessary to help define the recoverability of industry association dues, the Commission should look to its own regulations, which direct that expenditures on political activities are not recoverable, but that expenditures related to participation in regulatory proceedings related to utility operations may be.[16] This is consistent with the fact that utilities are regulated and participation in a range of regulatory proceedings and rulemakings at the state and federal level is not just in connection with their operations, but essential to those operations, as these proceedings dictate how they provide electricity to customers and the rates they are allowed to charge for this service.

If the Commission determines that a clearer definition of what its own regulations mean with respect to what constitutes expenditures to "influence public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances" is needed, it has at its disposal both the clear language of the LDA as well as the IRC definitions.[17]

B. While the Commission Lacks the Legal Authority to Directly Regulate Trade Associations, Current Commission Processes Provide for Transparency and Oversight for Any Amount of Association Dues Included in Account 930.2

Nothing in the NOI indicates that current Uniform System of Accounts ("USofA") regulations are deficient or fail to assure that trade association dues are recorded accurately or appropriately. As Commission-regulated entities, electric utilities have numerous reporting requirements, including annual financial and operating reports that are included in the mandatory FERC Form 1. All filed FERC Forms 1 are available on the Commission's website for review.

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[16] As noted in the next section, these amounts, if recorded in Account 930.2, are presumptively and not automatically recoverable.

[17] For clarity, the Commission should consider amending 18 C.F.R. §367.4264(a) to delete "or for the purpose of influencing the decisions of public officials" to the extent that the use of the phrase "public official" contradicts the clear intent in section b of the same regulation that participation in regulatory and other government proceedings can be recovered. In the alternative, the Commission could strike "public official" and replace it with "elected official" to ensure a clearer distinction between the treatment of lobbying activities and regulatory activities.

Any stakeholder can review the FERC Form 1 filed by any regulated entity, including amounts recorded in Account 930.2, Miscellaneous General Expenses.

The USofA, which is the required system of accounting for FERC Form 1, provides basic account descriptions and definitions that are useful in understanding the information reported in that Form. This standardized accounting system allows for consistency when revenues and expenses are examined by the Commission—as well as by state commissions—when rate cases are filed or when the Commission conducts audits.

Within FERC Form 1 and the USofA, there is Account 930.2, Miscellaneous General Expenses. Under the USofA definition of Miscellaneous General Expenses, association dues are charged to this account and are presumptively recoverable through cost-of-service rate recovery.[18] There is a specific line item that lists the amount of such dues on page 335 of the Form No. 1. While these amounts are presumptively recoverable, such recovery is neither mandatory nor automatic, and these amounts are reviewable by the Commission through audits or rate cases, by state commissions, and by all interested stakeholders. As discussed below, rate cases provide an opportunity for parties to contest specific issues. The Commission audit staff also does a thorough job of reviewing inputs, catching errors, and ensuring that accounting changes are made, if needed, and refunds granted.[19] In addition, state commissions also routinely require additional supporting information when assessing whether to permit recovery

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[18] 18 C.F.R. Part 101, § 930.2 (emphasis added); *see also* 18 C.F.R. Part 201, § 930.2.

[19] *See, e.g.*, Audit Report of Division of Audits within Department of Enforcement, Docket No. FA15-10-000 at 28 (2018); Audit Report of Division of Audits within Department of Enforcement, Docket No FA15-11-000 at 23 (2018). Commission Audit Staff reviewed both Entergy Arkansas's and Entergy Gulf States Louisiana's compliance with Accounts 930.2 and 426.4 and identify an issue with the classification of 2012 EEI lobbying expenses. Entergy Arkansas and Entergy Gulf States Louisiana refunded the misclassified amounts and updated their accounting policies and procedures to ensure industry association membership dues are accounted for consistently with the Commission's requirements.

of amounts included in Account 930.2.[20] Thus, significant oversight and review of these inputs already exists.

Although the NOI appears to question whether the Commission has established the appropriate rules around trade association dues, the Commission already has specifically addressed what expenses may be included in Account 930.2 and that the utility has the responsibility of appropriately breaking down the costs.[21] In *Delmarva,* the Commission stated

> The Commission has allowed utilities to allocate EEI contributions to wholesale customers only to the extent the contributions are for research and development programs to which wholesale customers themselves could not contribute. However, that portion of EEI contributions used for lobbying activities may not, under any circumstances, be included in the utility's cost of service. Thus, the portion of EEI expenditures that a utility may include, if any, in its cost of service depends on the purpose for which the contributions were made. The burden of breaking down EEI expenditures falls upon the utility seeking to include such contributions in its cost of service.[22]

In *Pacific Gas and Electric* ("*PG&E*"), the Commission upheld the Presiding Judge's finding that the allocation of EEI dues in a transmission rate case was reasonable.[23] In response to concerns that PG&E had not met the *Delmarva* standard, the Presiding Judge found that PG&E

[20] More member company dues are recovered in rates approved by state public utility commissions than Commission-jurisdictional transmission rates. State public utility commissions across the country conduct open and transparent rate reviews to determine the costs that regulated electric companies appropriately can recover in rates. During these proceedings, EEI's member companies provide necessary record evidence to support each recoverable expense, including a portion of their trade association dues. As part of the process, commission staff and other intervening parties have an opportunity to review, refute, and request more evidence. These commissions then make decisions based on that record of evidence.

[21] *See, e.g*., *Delmarva Power & Light Co*., 58 FERC ¶ 61,169 (1992), *order on reh'g*, 58 FERC ¶ 61,282 (1992), *further order on reh'g,* 59 FERC ¶ 61,169 (1992) ("*Delmarva*"); *Wisconsin Power and Light Company*, Opinion No. 141, 19 FERC P 61,288, at 61,569-70, *order on reh'g*, 20 FERC ¶ 61,203 (1982); *Pub. Serv. Co. of New Mexico*, Opinion No. 133, 17 FERC P 61,123 at 1,248-49 (1981), *order on rehearing*, Opinion No. 133-A, 18 FERC ¶ 61,036, *opinion and order on appeal*, Opinion No. 133-B, 21 FERC ¶ 61,215 (1982), *aff'd sub nom*.; *City of Gallup v. FERC*, 702 F.2d 1116 (D.C. Cir. 1983); *Illinois Power Company*, 15 FERC ¶ 61,050 at 61,094 (1981), *order granting partial reh'g*, 19 FERC P 61,073 (1982); *Union Electric Company*, 8 FERC P 63,026 at 65,345 (1979), *summarily affirmed*, Opinion No. 94, 12 FERC ¶ 61,239 (1980).

[22] *Delmarva*, 58 FERC ¶ 61,169 at 61,509.

[23] *Pacific Gas and Electric*, Order on Initial Decision, 173 FERC ¶ 61,045 at P 221, 228 (2020).

and Commission trial staff had shown that EEI membership provided benefits to customers and that the allocation was just and reasonable.[24] In support of the benefits provided to customers, PG&E indicated that

> PG&E's membership categorization in EEI is at the "US Investor-Owned Electric Companies" level, and that this category of membership entitles PG&E to numerous services that benefit Network Transmission customers. Among these are access to information regarding reliability, physical and cyber security best practices as well as best practices regarding inspections, operations and preventative and corrective maintenance. Many of these areas are applicable to PG&E's electric transmission system. In that regard, PG&E states, employing best practices for these activities results in more efficient operations and can lower the overall cost of network transmission O&M expenses.[25]

This case illustrates that existing policies and regulations provide transparency and the ability to challenge the amounts included in Account 930.2. It also is a clear and specific example of the Commission effectively exercising its authority to review and approve such recovery when electric utilities appropriately justify such requests.

Consistent with these regulations and Commission precedent, EEI works with its members to ensure that lobbying expenses are not inadvertently included in Account 930.2. As noted, on an annual basis, EEI provides members with dues statements that clearly delineate the portion of EEI's dues that are allocated to lobbying activities. A review of a dues statement, therefore, allows EEI members to easily determine which amounts are recorded appropriately in Account 930.2 and which are not.

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[24] *Pacific Gas and Electric*, Initial Decision, 165 FERC ¶ 63,001 at P 776, 780 (2018).

[25] *Id.* at P 776 (internal citations omitted).

C. EEI is Proud of the Work We Do on Behalf of Customers and Our Membership

Since EEI's membership covers all U.S. investor-owned electric companies, we have the ability to organize and deliver industry-wide initiatives and consensus, where possible, on important policy and regulatory issues. Examples include nationwide campaigns to increase military hiring; spur electric vehicle and charging infrastructure deployment; promote diversity, equity, and inclusion within EEI member companies and the communities they serve; report carbon emissions to support customer clean energy goals; encourage the development of smart communities; and improve the customer experience, among others.[26] These industry-wide benefits have resulted in direct benefits to customers and facilitated larger changes in the industry.

In addition to these industry-wide initiatives, a utility's membership in an industry association provides significant benefits to its customers. EEI provides member companies with a significant range of services that benefit electricity customers, beyond any lobbying activity that we report consistent with federal requirements. For example, EEI's industry-wide representative position provides direct benefits to member company customers via our monitoring and participation in broader regulated proceedings. This work tracking, summarizing, sharing, and participating in various proceedings across the regulatory landscape would otherwise be done in a piece meal fashion creating duplicative costs across the more than 50 EEI members. These are costs that are saved and multiplied across all of the various areas that EEI covers. In addition, there is the administrative efficiency that trade organizations provide for regulators and other stakeholders, by providing a forum to create common positions

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[26] *See, e.g.*, Troops to Energy Jobs; D&I Commitment; Smart Communities; Carbon Reporting Database; Leading by Example-EV Fleets.

and participation. This efficiency may be why the benefits of trade association participation have been recognized for decades as laid out in *Pacific Gas and Electric,* cited above. In addition to these examples, there are many more examples of when the benefits of EEI membership flow directly to our members customers, including those listed below.

Grid Resilience and Power Restoration

The work EEI does with our members on storm response and recovery is the strongest customer benefit. EEI and member companies have devoted significant time and resources to strengthen the reliability and resiliency of the energy grid, which directly benefits customers. During weather events, EEI provides a coordinating function between members and with the federal and state governments. EEI also provides strategic communication support aimed at ensuring that customers have the most up-to-date information on safety and restoration.

The work EEI does with our members through the mutual assistance process has evolved to meet the needs of increasingly strong and frequent storms, an increasingly connected society that runs on reliable power, and new technologies that help restore power more quickly. These efforts paid off during recent storms. By applying the lessons learned from Superstorm Sandy and the tools developed, including developing the government-industry partnership and cross-sector coordination embodied in the Electricity Subsector Coordinating Council ("ESCC"), EEI and our member companies have further streamlined response and restoration efforts. As one example, there was widespread recognition that our members' investments in the energy grid, their streamlined and enhanced storm response, and their enhanced coordination resulted in a much faster, successful restoration effort for 3.1 million customers impacted by Hurricane Matthew. That same commitment to safe, efficient power restoration was on display during other historic storms like Hurricane Irma.

Grid Security

EEI was instrumental in the creation and growth of the ESCC and remains active in its leadership and staffing. The ESCC serves as the principal liaison between the federal government and the electric power industry, with the mission of coordinating efforts to prepare for, and respond to, national-level disasters or threats to critical infrastructure. The ESCC includes electric company CEOs and trade association leaders representing all segments of the industry. Its counterparts include senior Administration officials from the White House, relevant Cabinet agencies, federal law enforcement, and national security organizations.

EEI is also leading the industry in efforts to partner with the federal government to address new cybersecurity threats. As cybersecurity risks proliferate, EEI's member companies are organizing themselves to pool resources in the face of cyber incidents or attacks that exceed an individual member company's response capacity. Building on our successful mutual assistance model, EEI through the ESCC has also launched a Cyber Mutual Assistance ("CMA") Program to provide emergency cyber assistance within the electric power and natural gas industries. Currently more than 170 entities, representing electric and natural gas investor-owned companies, public power utilities, electric cooperatives, Regional Transmission Organizations and Independent System Operators, and Canadian energy companies, participate in the CMA Program. These entities cover more than 80 percent of U.S. electricity and natural gas customers, and more than 1.25 million electricity customers in Canada.

Meetings and Conferences

EEI offers dozens of meetings and conferences each year, providing information, data exchange, and an opportunity for policy discussions aimed at ensuring the continued provision of affordable, reliable, and resilient clean electricity in a rapidly changing world. The following is a list of some of the meetings held by EEI to promote dialogue and development of best practices across the industry. Even during the pandemic, with all in-person meetings cancelled, EEI hosted more than 1,000 webinars, virtual meetings, and conferences.

- **Accounting –** These conferences provide a forum for member companies to discuss current issues in the electric and natural gas industries and an opportunity for professional development, including continuing professional education credits for certified public accountants employed throughout the industry. These meetings include speakers from accounting standard setting bodies, including the Financial Accounting Standards Board, Securities and Exchange Commission, and FERC, and independent public accounting firms. The meetings also provide opportunities for industry accounting professionals to meet with their peers, including breakout sessions to focus on specific accounting topics, to discuss accounting requirements and best practices that benefit customers through cost-effective, efficient, and accurate financial records and reports.

- **Business Diversity –** The Annual EEI Business Diversity Conference focuses on priorities for our industry, our customers, our suppliers, and our other stakeholders, and is designed for EEI member company representatives who work in the external affairs, procurement, supply chain, and community relations fields. For more than four decades, the goal of this program has been to identify and promote the utilization of diverse suppliers capable of meeting our industry's various procurement needs, consistent with many state requirements for members to use more diverse suppliers. This program is committed to pursuing relationships with diverse suppliers and using innovative approaches designed to continually improve business opportunities.

- **National Key Accounts –** EEI's National Key Accounts meeting/conference is a customer-oriented program where leading multi-site customers and electric company account representatives collaborate to develop efficient energy management strategies that can be integrated into facilities nationwide. By organizing a network of electric companies, trade allies, and industry leaders, the EEI National Key Accounts program provides customers with vital advice on electricity needs and new, cutting-edge technologies.

- **Occupational Safety and Health –** Among other things, the occupational safety and health meeting offers a safety benchmarking workshop, part of a comprehensive effort by EEI to help the industry establish best practices for occupational safety and health. In recent years, this group has undertaken work aimed at further reducing the incidence of severe injuries and fatalities.

- **Transmission, Distribution, Metering, & Mutual Assistance –** EEI's Transmission, Distribution, Metering & Mutual Assistance Conference is the premier conference that focuses on transmission, distribution, metering, and mutual assistance issues for the investor-owned electric sector. This conference

> addresses the critical engineering and operations areas that are important to transmission, distribution, metering, and mutual assistance professionals.

As discussed above, these services provide direct benefits to customers.

D. EEI Supports Transparency for All Participants in Commission Proceedings

As discussed above, EEI's membership and lobbying expenditures are publicly available in federal filings. To provide additional ease in accessing this available information and to provide additional transparency about activities and funding, EEI posts its budget information on EEI.org as discussed below.

For decades EEI has, and continues to maintain, a rigorous budget approval process that runs directly through our Board of Directors. EEI's annual budget is funded almost exclusively through member company dues, with a small portion of additional revenue received from meetings, publications, and international and associate membership. EEI's Board of Directors, which is made up of the chief executive officers of each of our member companies, approves EEI's budget annually, including any increase in dues and proposed expected expenditures.

While some of this budget information is provided by EEI member companies in state rate review proceedings when and if requested, additional details may be requested by various stakeholders. In an effort to further promote transparency to aid both state regulators' review and the Commission's review of trade association dues during rate review proceedings, EEI provides additional transparency regarding its budget and its spending through its 2022 Lobbying, Advocacy, and Other Expenditures Report, which also is posted on our website at https://www.eei.org/about/Pages/about.aspx and attached hereto as Appendix A. This report, which will be updated annually, provides information about our dues, our budget, and our expenditures as approved by our Board of Directors. It also compiles already publicly available information, including annual filings with the IRS related to our lobbying activities, so that regulators and others can more easily access them. We encourage all stakeholders in Commission proceedings to provide similar levels of transparency and are hopeful that this provides a model for EPI, CBD, and others to provide transparency into their budget and funding sources to help ensure that the Commission's transparency concerns can be fully addressed.

III. CONCLUSION

As discussed herein, EEI appreciates the opportunity to address these requests, to enlighten the Commission on our process, as well as on our activities that they may not even be aware of, and to highlight our transparency and budget disclosure.

Respectfully Submitted,

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February 22, 2022

Appendix A

Edison Electric INSTITUTE

2022 Lobbying, Advocacy, and Other Expenditures

February 2022

The Edison Electric Institute (EEI) is the trade association that represents all U.S. investor-owned electric companies. EEI's member companies provide electricity for more than 220 million Americans and operate in all 50 states and the District of Columbia.

EEI's member companies are woven tightly into the fabric of our nation. For nearly 140 years, they have provided the energy that has sustained our customers and our communities, while powering our nation's economy. Today, the electric power industry supports more than 7 million jobs in communities across the United States and contributes at least 5 percent annually to our nation's GDP.

In addition to our U.S. members, EEI has more than 65 electric companies with operations in more than 90 countries as international members, and hundreds of industry suppliers and related organizations as associate members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

#Committed2Clean®

Across the country, EEI's member companies are leading the clean energy transformation and are working every day to get the energy we provide as clean as we can as fast as we can, without compromising the reliability and affordability that our customers and communities value. We know we are well-positioned to be a major part of the climate solution—and we want to be part of the solution.

Many factors are driving our industry's clean energy transformation, including declining costs for renewable energy resources, technological improvements, changing customer expectations, federal and state regulations and policies, and the increasing use of distributed energy resources.

Today, carbon emissions from the U.S. electric power sector are at their lowest level in nearly 40 years. Equally important, 40 percent of our nation's electricity now comes from clean, carbon-free sources, including nuclear energy, hydropower, wind, and solar energy. Almost 50 EEI member companies already have committed to reach zero or net-zero carbon emissions by 2050 or earlier.

To create a cleaner economy, we will need a cleaner transportation sector. EEI's member companies are investing more than $3.4 billion to help build and to deploy electric vehicle charging infrastructure and to accelerate electric transportation programs, with more than $1 billion of additional investment pending.

Our Federal and State Policy Activities

EEI's member companies are among the most regulated companies in the country, and EEI engages on their behalf with federal and state legislators, regulators, and other policymakers through lobbying, advocacy, and regulatory proceedings, with the goal of providing customers affordable, reliable, and resilient clean energy.

EEI also engages with a range of other industry stakeholders on issues related to grid reliability; cyber and physical security; mutual assistance and disaster response; finance and tax matters; and programs, services, and solutions for electricity customers.

EEI's Core Budget

EEI's core budget is funded through member dues. EEI's Board of Directors approves EEI's budget annually, including any increase in dues and proposed expected expenditures. In general, the dues a company pays is a function of its average number of customers, total revenues attributed to its electric operations, and owned generating capacity. For transmission-only members, dues reflect total revenues attributed to electric operations and transmission and distribution year-end assets that are either wholly or jointly owned.

Total dues revenue for 2022 is anticipated to be $58.9 million; non-dues revenue, from meetings, publications, and international and associate memberships, is expected to be $13.1 million.

EEI's core budget is devoted to business and policy issues that support our member companies in providing affordable, reliable, and resilient clean energy to the customers and communities they serve. The budget includes employee salaries and benefits; general office expenses and overhead; and programs and activities.

EEI's Board of Directors approved core budget expenditures by issue area for 2022 as follows.

Business and Policy Issues	Core 2022 Expense Budget *(in millions of $s)*
Clean Energy	15.4
Grid Security & Reliability	11.4
Grid Investment & Modernization	9.4
Customer Programs & Assistance	7.8
Finance & Taxes	7.4
Member Services	3.9
Human Resources/Diversity, Equity & Inclusion & Workforce Development	3.6
Total	**58.9**

The approved core budget expenditures by department for 2022 are noted below.

Department	Core 2022 Expense Budget *(in millions of $s)*
Clean Energy & Environment	4.0
Communications	7.5
Customer Solutions	4.6
Energy Supply & Finance	7.9
General Counsel's Office	4.5
Government Relations	3.5
Human Resources	1.5
Member Engagement	3.3
Political & External Affairs	6.5
Security, Preparedness & Reliability	9.2
State & Federal Regulatory Affairs	6.4
Total	**58.9**

Lobbying Expenditures and Disclosure

EEI reports its lobbying expenses to Congress as required by federal law via the quarterly filing of Lobbying Disclosure Reports. EEI uses the definitions provided by both the Lobbying Disclosure Act and the Internal Revenue Code (IRC) section 162(e) to identify lobbying expenses. This includes both federal lobbying and state-level lobbying and grassroots advocacy.

Following are links to EEI's lobbying disclosure reports for 2021:

- Quarter 1
- Quarter 2
- Quarter 3
- Quarter 4

EEI estimates the amount of member dues that likely will be spent on lobbying each year and provides that percentage to members as part of their annual dues invoice. EEI provides an actual percentage at the end of the year after all reports have been filed.

In 2021, 14.3% of EEI dues was used for lobbying activities. For 2022, we estimate that the amount will be 13%.

In addition, EEI runs the Political Action Committee (PAC) known as PowerPAC. PowerPAC is funded by contributions made by EEI member companies, member company executives and other employees, and eligible EEI employees. EEI matches employees' PowerPAC contributions, directed to the charity of the employee's choice. In 2021, the PowerPAC match was approximately $80,000 and came from EEI's core budget.

PowerPAC reports its activities to the Federal Election Commission (FEC) every month as required by law. These reports can be found on the FEC website.

Contributions

EEI makes contributions to various political and charitable groups, including IRC section 501(c)(4) and section 527 organizations. These amounts are included in the amounts EEI reports to members as lobbying expenses. The 2021 contributions to these groups totaled $585,500. A similar contributions budget is expected for 2022.

A complete list of the groups to which EEI makes contributions that are greater than $5,000 is reported each year on the Form 990, Return of Organization Exempt From Income Tax, filed with the Internal Revenue Service.

EEI's 2021 Form 990 will be filed in November 2022. The 2020 Form 990 can be found here.

Organizations to which EEI contributed more than $5,000 in 2020:

- African American Mayors Association
- All Hazards Consortium
- Alliance to Save Energy
- Alzheimer's Association
- American Association of Blacks in Energy
- American Benefits Council
- American Council for Capital Formation – Center for Policy Research
- American Legislative Exchange Council
- American Society of Association Executives
- American Working Families
- Americans for Tax Reform
- Board of Hispanic Caucus Chairs
- Carbon Utilization Research Council
- Center for Energy Workforce Development
- Citizens Against Government Waste
- Citizens for Responsible Energy Solutions
- Congressional Black Caucus
- Congressional Hispanic Caucus Institute
- Congressional Institute
- Consumer Energy Alliance
- Curators of the University of Missouri
- Democratic Attorneys General Association
- Democratic Governors' Association
- Democratic Legislative Campaign Committee
- Diabetes Research Institute Foundation
- Electric Drive Transportation Association
- Floodplain Alliance for Insurance Reform
- Foundation for Public Affairs
- Friends of Spencer Cox
- J Street Cup
- Massachusetts Institute of Technology
- Mid-America Regulatory Conference
- National Association of Manufacturers
- National Association of Regulatory Utility Commissioners
- National Association of State Energy Officials
- National Black Caucus of State Legislators

(continued)

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(Contributions, continued)

- National Capital Area Council Boy Scouts of America
- National Conference of State Legislatures
- National Endangered Species Act Reform Coalition
- National Energy & Utility Affordability Coalition
- National Energy Resources Organization
- National Foundation for Women Legislators
- National Governors Association
- National Hispanic Caucus of State Legislators
- National League of Cities
- National Multiple Sclerosis Society
- National Organization of Black Elected Legislative Women
- National Urban League, Inc.
- NCSL Foundation for State Legislatures
- North American Energy Standards Board
- Northwestern University
- One Nation, Inc.
- Prevent Cancer Foundation
- Republican Attorneys General Association
- Republican Governors Association
- Republican State Leadership Committee
- Roosevelt Institute
- Senate Presidents' Forum
- So Others Might Eat
- Southern States Energy Board
- State Government Leadership Foundation
- Taxpayers Protection Alliance
- The Artists and Athletes Alliance
- The Aspen Institute
- The Council of State Governments
- The Keystone Center
- The Latino Coalition
- The National Labor and Management Public Affairs Committee
- The Third Way Foundation, Inc.
- The U.S. Conference of Mayors
- U.S. Capitol Historical Society
- U.S. Chamber of Commerce
- Unites States Hispanic Chamber of Commerce
- Washington Tennis & Education Foundation
- Western Governors' Association
- Women's Energy Summit

Separately Funded Activities

Some EEI member companies choose to pay for separate activities and programs that fall outside of the core EEI budget. EEI runs these programs for the benefit of these members. These activities and their expected budgets for 2022 are noted below.

For a fee, members and other electric companies can access a range of employment tests that are validated specifically for job functions within the electric industry, including power plant operators, maintenance and craft positions, power dispatching positions, and customer service representatives, among others. Fees are based on the size of the company, with a maximum annual fee of $7,500. None of these funds are used for lobbying or advocacy. More information about the Employment Testing Consortium can be found here.

In addition, most EEI members contribute to the Restoration, Operations, and Crisis Management Program (Restore Power), which focuses on improvements to industry-wide responses to major outages; continuity of industry and business operations; and EEI's all hazards (storms, wildfires, cyber, etc.) support and coordination of the industry during times of crises. Contributions to Restore Power depend on the number of customers a member has, with a maximum contribution of $15,000 annually. None of these funds are used for lobbying or advocacy.

In 2006, federal energy regulators approved the Spare Transformer Equipment Program (STEP), an electric industry program that strengthens the sector's ability to restore the nation's transmission system more quickly in the event of a terrorist attack. STEP represents a coordinated approach to increasing the industry's inventory of spare transformers and streamlining the process of transferring those transformers to affected companies in the event of a transmission outage caused by a terrorist attack. To participate in STEP, members make an annual voluntary contribution of not more than $7,500. None of these funds are used for lobbying or advocacy. More information about STEP can be found here.

Activity	Budget ($s)
Employment Testing Consortium	2,487,000
Restoration, Operations & Crisis Management (Restore Power)	589,000
Spare Transformer Equipment Program	351,000

Emerging Issues

Many EEI member companies choose to make an additional annual contribution of 10% of their dues to an emerging issues fund. This fund, controlled by EEI's President, is designed to allow EEI to respond to issues that were not expected and could not be planned for during the normal budgeting process. In addition, these funds are used to pay political consultants, litigation expenses, and engagement in state legislation and policy matters.

The 2022 emerging issues budget is $5.5 million.

Some of these funds also are used for any advertising that EEI does, particularly social media ads designed to educate the public about power restoration events; public and media relations; and public opinion polling. In 2021, $607,000 was spent on advertising, including social media ads designed to educate the public about power restoration events; $634,000 was spent on public and media relations. For 2022, these expenses are expected to be similar.

EEI estimates the amount of funds in the emerging issues budget that likely will be spent on lobbying each year and provides that percentage to members as part of their annual dues invoice. EEI provides an actual percentage at the end of the year.

In 2021, 27.3% of these funds were used on lobbying activities. For 2022, EEI estimates that this amount will be similar.

Separately Controlled Groups

EEI provides accounting and other services to three unincorporated, issue-specific groups. These groups are the Avian Power Line Interaction Committee, Energy Wildlife Action Coalition, and the Utility Solid Waste Activities Group.

These groups send separate invoices to their members. These amounts are not included in EEI dues. In addition, the Executive Directors of two of these groups are EEI employees for purposes of payroll and benefits. EEI is a member of these groups and pays them dues. These dues come from the emerging issues fund.

EEI's relationship to these groups is governed by separate Memoranda of Understanding (MOU), which explicitly state that EEI does not control these groups, their policy engagement, or any expenditures. These MOU require these groups, as appropriate, to compensate EEI for any office support provided, including overhead. Because these groups are not incorporated, EEI reports the dues these groups receive, and that EEI holds, on our 990 as if they are our own and includes any lobbying done by their Executive Directors in our lobbying disclosure reports.

These groups and their 2022 budgets are noted below, along with EEI's membership dues. EEI excludes these dues from amounts reported to member companies that may be recoverable from their customers.

Group	2022 Budget ($s)	EEI 2022 Dues ($s)
Avian Power Line Interaction Committee (APLIC)	193,000	2,500
Energy Wildlife Action Coalition (EWAC)	1.1 million	38,000
Utility Solid Waste Activities Group (USWAG)	4.1 million	41,000
Utility Water Act Group (UWAG)*	N/A	131,000

**EEI does not provide accounting or other financial services to UWAG. EEI is a member of UWAG and pays annual dues.*

Charitable Organizations and Foundations

EEI has two associated IRC section 501(c)(3) organizations: The Center for Energy Workforce Development (CEWD) and the Institute for Electric Innovation/Edison Foundation. EEI pays dues of $105,000 to CEWD annually. These funds are from the core budget. EEI does not make any contributions to the Edison Foundation.

In 2022, EEI anticipates providing $337,000 of in-kind support to CEWD in the form of administrative, accounting, and legal support services. EEI does not provide any in-kind support to the Foundation.

EEI member companies can choose to support these organizations via separate voluntary contributions.

To learn more about these groups, visit:

The Center for Energy Workforce Development

The Institute for Electric Innovation/The Edison Foundation

About EEI

The **Edison Electric Institute** (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for more than 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 65 international electric companies with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

For more information, visit our Web site at **www.eei.org.**

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY COMMENTS
OF THE EDISON ELECTRIC INSTITUTE

I. INTRODUCTION

Pursuant to the Notice of Inquiry ("NOI") issued by the Federal Energy Regulatory Commission's ("FERC" or "Commission") on December 16, 2021,[1] the Edison Electric Institute ("EEI") respectfully submits these reply comments. EEI filed initial comments in this proceeding on February 22, 2022, which included as Appendix A EEI's 2022 Lobbying, Advocacy, and Other Expenditures Report.[2] This report provides information about EEI's dues, our budget, and our expenditures, as approved by EEI's Board of Directors. To help provide regulators and others with easier access to related materials, the report also includes a compilation of publicly available information, including annual filings with the Internal Revenue Service ("IRS") that are related to EEI's lobbying activities.

As discussed herein, electric utilities are regulated at the state and federal levels and therefore must be able to participate in a range of proceedings. At members' direction, EEI seeks to engage constructively in these proceedings, providing our expertise and collective

[1] *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Notice of Inquiry, 177 FERC ¶ 61,180 (Dec. 16, 2021) ("NOI").

[2] *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses,* Initial Comments of the Edison Electric Institute, Docket No. RM22-5-000 (Feb. 22, 2022) ("EEI Initial Comments"). The Lobbying, Advocacy, and Other Expenditures Report will be updated annually and is available on EEI's website at https://www.eei.org/about/Pages/about.aspx.

industry knowledge and perspectives on how proposals may affect the provision of services to customers and impact electric utilities' ability to provide safe, reliable energy to customers at just and reasonable rates. State and federal policy makers and regulators require a complete record and the opportunity to consider a range of viewpoints to support reasoned decision making and help ensure that their decisions are in the best interest of customers while maintaining the resilience and reliability of the energy grid.

Moreover, electric utilities already are required to demonstrate that their rates are just and reasonable and already have the burden of proof when seeking to include any expense in rates. States are capable of making their own determinations about the recovery of association dues, and the Commission should not attempt to dictate state approaches. Commenters advocate for the Commission to adopt a one-sided approach to defining lobbying. However, as set forth in greater detail below, the Commission should reject commenters' arguments as commenters have not provided support for their position, the definition they propose is inconsistent with existing federal law, and changes to the Uniform System of Accounts ("USofA") are not needed.

II. COMMENTS

Outside of dicta and unsubstantiated allegations, commenters advocating for Commission action offer the same request contained in the original Petition,[3] which is that the federal definition of lobbying is too narrow and, as a result, the Commission should make substantial changes to its USofA. However, commenters have shown no reason for the Commission to adopt such an approach to defining lobbying, which is one-sided and inconsistent with existing federal law.

[3] *Petition For Rulemaking to Amend the Uniform System of Accounts' Treatment of Industry Association Dues*, Docket No. RM21-15-000 (Mar. 17, 2021) ("Petition").

As an initial matter, while commenters may wish to deem all trade association activities as lobbying by redefining the definition of "lobbying" for USofA purposes, the Commission cannot unilaterally change the definition that has been legislated by Congress. This definition forms the basis of all political activity reporting, not just activity undertaken by energy companies. This advocacy/lobbying portion of EEI's dues, which is legally not recoverable, is calculated using the Internal Revenue Code ("IRC") definition of "lobbying and political activities" under section 162(e), in addition to the definitions in the Lobbying Disclosure Act, as amended ("LDA"), and as permitted by the LDA. The IRC definition broadly captures not only federal lobbying, but also state and grassroots lobbying and political activity. EEI uses the IRC definition because it is broad, capturing both federal and state-level activities, which is important to members whose retail electricity rates are approved by state public utility commissions.[4] As discussed in EEI's Initial Comments, EEI elects to use the broad IRC definition for its mandatory LDA reports,[5] which are filed quarterly with the Secretary of the Senate and the Clerk of the House of Representatives and are publicly available.[6] Notably, it is a federal crime to provide any false statements or concealments in these reports.[7] In addition, the Government

[4] EEI also opts to use the IRC definition because such amounts are not tax deductible. *See* IRC §§ 162(e); *see also* 26 C.F.R. § 1.162-29. Using the same definition for IRS reporting and for other mandatory lobbying disclosures is reasonable from an accounting and membership perspective and legally permissible. *See* 2 U.S.C. § 1610.

[5] *See* 2 U.S.C. § 1601 *et seq*. The LDA definition of lobbying would require EEI to report contacts with the Commission but would exclude any state-level lobbying.

[6] Registrations and reports are available online at the U.S. House of Representatives website, http://lobbyingdisclosure.house.gov, as well as the U.S. Senate website, http://www.senate.gov/lobby. Links to EEI's quarterly reports for 2021 can be found in the 2022 Lobbying, Advocacy, and Other Expenditures Report.

[7] *See* the False Statements Accountability Act of 1996, amending 18 U.S.C. § 1001. In addition, whoever knowingly fails: 1) to correct a defective filing within 60 days after notice of any such defect by the Secretary of the Senate or the Clerk of the House; or 2) to comply with any other provision of this Act may be subject to a civil fine of not more than $200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than five years or fined under Title 18 of the U.S.C. or both. *See* LDA § 1606.

Accountability Office is required by law to audit these reports annually.[8] The U.S. Attorney's Office for the District of Columbia is charged with enforcing the requirements of the LDA and investigates all referrals for non-compliance made by the Secretary of the Senate or the Clerk of the House of Representatives.

While commenters concede that utilities do not seek cost recovery of their trade associations' "lobbying" expenses as defined by the federal tax code and do not provide any instances of trade associations mis-allocating funds, they nevertheless assert that substantial changes to the USofA are needed based on allegations of lack of transparency and clarity. The primary changes that commenters seek to make to the USofA are: (1) removing the language in Account 426.4 that states, "such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations" shall not be included in Account 426.4;[9] and (2) requiring utilities to record dues paid to industry associations in Account 426.4 rather than in Account 930.2. However, as set forth below, such changes are not needed because the USofA, in conjunction with regulatory and judicial clarification, provides guidance on what should be included in the accounts.

First, while expenses listed in Accounts 930.1[10] and 930.2[11] are presumptively recoverable, there is relevant guidance in the USofA notes. For example, Note B to Account 930.1 states that expenditures for Certain Civic, Political and Related Activities expenses for

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[8] The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended the LDA. Among these changes, HLGOA included a provision for GAO to annually audit the extent of lobbyists' compliance with LDA. *See* Pub. L. No. 110-81, 121 Stat. 735 (Sept. 14, 2007), codified at 2 U.S.C. §1614. 22 U.S.C. GAO's most recent report was published in April 2021, https://www.gao.gov/assets/gao-21-375.pdf.

[9] 18 C.F.R. pt. 101, Account 426.4.

[10] 18 C.F.R. pt. 101, Account 930.1.

[11] 18 C.F.R. pt. 101, Account 930.2.

advertising activities, which are designed to solicit public support or the support of public officials in matters of a political nature, should be included in Account 426.4.[12]

In addition, Commission precedent indicates that "the 'intended use' and 'reason behind' the expenditure[s]" dictates their appropriate account.[13] In *Delmarva,* the Commission stated,

> The Commission has allowed utilities to allocate EEI contributions to wholesale customers only to the extent the contributions are for research and development programs to which wholesale customers themselves could not contribute. However, that portion of EEI contributions used for lobbying activities may not, under any circumstances, be included in the utility's cost of service. Thus, the portion of EEI expenditures that a utility may include, if any, in its cost of service depends on the purpose for which the contributions were made. The burden of breaking down EEI expenditures falls upon the utility seeking to include such contributions in its cost of service.[14]

Furthermore, recently, in *Newman,* the U.S. Court of Appeals for the District of Columbia Circuit affirmed that the purpose of the activity should be considered, and that direct and indirect activity related to influencing decisions associated with certification of a transmission facility should be placed in Account 426.4.[15] There is no indication that the focus of this provision is on expenditures made to engage in regulatory proceedings, an activity that is essential to utilities' ability to function as some of the most heavily regulated businesses in the country, or on other activities that are not federally defined as lobbying. This direction is clear and additional changes to the USofA, as suggested by commenters, are therefore not needed. Federal regulations, court precedent, and the USofA are clear that expenses for the purposes of political lobbying should be included in Account 426.4.

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[12] 18 C.F.R. pt. 101, Special Instructions – Accounts 426.1, 426.2, 426.3, 426.4, and 426.5.

[13] *ISO New England Inc.*, 117 FERC ¶ 61,070, at P 42 (2006).

[14] *Delmarva*, 58 FERC ¶ 61,169 at 61,509 (1992).

[15] *Keryn Newman and Alison Haverty v. FERC*, 22 F.4th 189 (D.C. Cir. 2021) ("*Newman*").

Moreover, the Federal Power Act ("FPA") provides that "[t]he business of transmitting and selling electric energy for ultimate distribution to the public is affected with the public interest."[16] In furtherance of the public interest and consistent with the FPA, EEI's member companies are among the most regulated companies in the country and are responsible for providing safe, reliable, affordable and increasingly clean energy to their customers. How electric utilities serve the public—and their business models—is a function of their responsibilities as determined by law and applicable federal and state regulation. Accordingly, legislative and regulatory proceedings on energy issues directly relate to a "utility's existing or proposed operation"[17] and participation in the development of new legislation and regulations and in regulatory proceedings is both appropriate and necessary.

Commenters' proposed changes "conflate[] any sort of advocacy, for any purpose, in any forum, with the narrow category of presumptively non-recoverable 'lobbying' and 'political' activities. This petition comes across as no more than an attempt to invoke the Commission's jurisdiction to silence political opponents."[18] Commenters only support this point when they cite EEI's and other trade organizations' positions, primarily at the state level, with which they do not agree and therefore assert, without proof, that those positions are not in the best interest of customers.[19] To help members achieve their clean energy goals, fulfill their regulatory

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[16] Federal Power Act section 201(a), 16 U.S.C. §824(a).

[17] 18 C.F.R. pt. 101, Account 426.4 (stating that "such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations" shall not be included in Account 426.4).

[18] *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Dissent of Commissioner Danly, Docket No. RM22-5-000 at P 6 (Feb. 1, 2022).

[19] And, as EEI has repeatedly demonstrated through comments in response to the Petition and the NOI, commenters mischaracterize EEI's positions on a range of issues, particularly with respect to climate change and the clean energy transition. Fifty EEI members have made voluntary, forward commitments to reduce their emissions, with two-thirds having committed to reducing emissions to zero or net-zero before or by 2050. To date, EEI member companies have reduced their greenhouse gas emissions more than 40 percent below 2005 levels, more than any

obligations, and serve the public interest, EEI convenes members to assess the direction that legislators and regulators provide and participates in a range of dockets and proceedings open to all stakeholders at the state and federal levels. At members' direction, EEI seeks to engage constructively, providing our expertise and collective industry thinking on how proposals may affect the provision of services to customers and impact the ability of utilities to provide safe, reliable energy to customers at just and reasonable rates. In addition, EEI provides technical and operational assistance to members, including facilitating the industry's unique mutual assistance efforts to restore power after events likes storms, hurricanes, and wildfires. Thus, despite some commenters' assertions to the contrary, not all of EEI's goals are political.

It is also important to note that a very small portion of EEI dues is recovered via FERC-jurisdictional rates. Instead, where permitted, a more significant portion of EEI's dues is recovered via retail rates approved by state commissions. Commenters have urged the Commission to make changes to the USofA to assist state regulators. State regulators have demonstrated that they are capable of making their own required assessments about the recoverability of trade association dues and have not indicated that such changes are necessary to assist them in evaluating requests for recovery of trade association dues, as evidenced by the broad spectrum of approaches they have taken to address this issue. The Commission should avoid taking any action that attempts to dictate to state regulators how to approach this issue. Presumptive recoverability is not automatic, and states can and do seek additional justification for recovery of trade association dues when they feel necessary. Commenters' examples of states that have sought additional information about EEI dues only underscore that the existing

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other sector of the U.S. economy and more than any country in the world. It is important to note that the greenhouse gas reductions in the U.S. have been driven by the power sector.

structure is sufficient to allow state regulators to make their own informed decisions. And, as noted, a new report is now publicly available to provide state regulators with more details about EEI expenditures. EEI made this report available to ensure that state regulators can readily access this information.

Thus, EEI urges the Commission not to expand the definition of lobbying to include education, advocacy, and other communication with state and federal regulatory and legislative bodies as proposed by commenters. The ability to educate and inform decision makers about the electric system and the impact that proposed regulatory changes could have on utility operations and the energy system is vital to ensuring that policies that are implemented support the clean energy transition while maintaining reliability and resilience, and providing a range of other benefits to customers. Utilities have the burden of showing that their rates are just and reasonable and prudently incurred, and as seen by the number of documents filed in this proceeding, information on EEI's activity and federal filings are readily available. Accordingly, no changes are needed to the USofA as suggested by commenters.

III. CONCLUSION

Commenters have shown no reason for the Commission to adopt an approach to defining lobbying that is one-sided and inconsistent with existing federal law. Federal regulations, court precedent and the USofA are clear that expenses for the purposes of political lobbying should be included in Account 426.4. Accordingly, changes are not needed to the USofA.

Respectfully Submitted,

/s/ Philip D. Moeller

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March 23, 2022

Document Content(s)

195 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RM22-5-000; Docket No. RM21-15-000]

Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses

Center for Biological Diversity

(Issued April 16, 2026)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of inquiry and termination of proceeding; denial of petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is withdrawing a notice of inquiry that sought comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Additionally, the Commission denies a petition for rulemaking.

DATES: The notice of inquiry published on December 23, 2021 (86 FR 72958) is withdrawn as of April 16, 2026.

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SUPPLEMENTARY INFORMATION:

195 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses	Docket Nos.	RM22-5-000
Center for Biological Diversity		RM21-15-000

WITHDRAWAL OF NOTICE OF INQUIRY AND ORDER DENYING PETITION FOR RULEMAKING

(Issued April 16, 2026)

1. On December 16, 2021, the Commission issued a Notice of Inquiry[1] in Docket No. RM22-5-000, seeking comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Prior to the Notice of Inquiry, on March 17, 2021, in Docket No. RM21-15-000, the Center for Biological Diversity filed a petition for rulemaking pursuant to Rule 207 of the Commission's Rules of Practice and Procedure[2] and section 553 of the Administrative Procedure Act,[3] requesting that the Commission amend the Uniform System of Accounts

[1] *Rate Recovery, Reporting, & Acct. Treatment of Indus. Ass'n Dues & Certain Civic, Pol., & Related Expenses*, 86 FR 72958 (Dec. 23, 2021) 177 FERC ¶ 61,180 (2021) (Notice of Inquiry).

[2] 18 CFR 385.207.

[3] 5 U.S.C. § 553.

(USofA) requirements for payments to industry associations engaged in lobbying or other influence-related activities (Petition).

2. As discussed below, we are exercising our discretion to withdraw the Notice of Inquiry and to terminate the proceeding in Docket No. RM22-5-000. We also deny the Petition.

I. **Background**

3. In March 2021, the Center for Biological Diversity filed a petition for rulemaking, requesting that the Commission amend the USofA requirements relating to utility payments to industry associations engaged in lobbying or other influence-related expenses. Specifically, the Center for Biological Diversity requested that the Commission amend the USofA to require the use of Account 426.4 (Expenditures For Certain Civic, Political and Related Activities) for all industry association dues paid by utilities.[4] In response to the Petition, the Commission received 35 comments.[5] Some commenters recommended that the Commission remove all industry association dues from rates, whereas others suggested that such a move is unnecessary because industry association dues are properly allocated between recoverable and non-recoverable accounts and changing this approach would be contrary to the fundamental principles of accounting.

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[4] Petition at 8, 16.

[5] A list of the commenters is provided in the Appendix.

4. In the Notice of Inquiry, the Commission stated that it has authority pursuant to the Federal Power Act (FPA) and the Natural Gas Act (NGA) to determine whether a rate is unjust, unreasonable, unduly discriminatory or preferential, and if the Commission determines that the rate is unlawful, to establish a just and reasonable replacement rate.[6] The Commission also stated that it has authority to prescribe and maintain systems of accounts, i.e., the USofA, for public utilities and licensees subject to the FPA, and natural gas companies under the NGA, and the rules and regulations contained therein.[7]

5. In the Notice of Inquiry, the Commission sought comments on a number of questions to examine the Commission's current policies and regulations governing the rate recovery, reporting, and accounting treatment of industry association dues and certain civic political and related expenses. The Commission also sought comments on any potential changes that may be necessary to ensure that such expenditures are appropriately accounted for under the USofA and that recovery of these expenditures through Commission jurisdictional rates is just and reasonable.

6. In response to the Notice of Inquiry, the Commission received 93 initial and reply comments.[8] Several commenters asserted that further rulemaking would be redundant because there is enough transparency into industry association dues. Some commenters asserted that utilities rely on itemized invoices to determine what amounts are

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[6] Notice of Inquiry, 177 FERC ¶ 61,180 at P 3 (citing 16 U.S.C. § 824e(a); 15 U.S.C. § 717d(a)).

[7] *Id.* (citing 16 U.S.C. § 825; 15 U.S.C. § 717g; 18 CFR pts. 101, 201).

[8] A list of the commenters is provided in the Appendix.

recoverable or nonrecoverable in rates. Other commenters argued that there is a lack of transparency. One commenter proposed that the Commission provide guidance on a case-by-case basis, rather than through general guidance.

II. Discussion

7. We appreciate the feedback commenters provided in response to the Notice of Inquiry. Based on consideration of the record, we find that the concerns raised in the Notice of Inquiry are better considered on a case-by-case basis, consistent with longstanding Commission practice.

8. Accordingly, we exercise our discretion to withdraw the Notice of Inquiry and terminate the proceeding in Docket No. RM22-5-000. For the same reasons, we also deny the Center for Biological Diversity's Petition. Although we decline to pursue the Notice of Inquiry, we encourage regulated entities to adopt tariff revisions that enhance transparency into the industry association costs included in an entity's rates.

9. We note that in individual cases, evaluating whether industry association costs were appropriately included in rates will continue to be governed by Commission

regulations,[9] not other regulatory agency regulations.[10] Specifically, expenditures for certain civic, political and related activities are typically not includable in rates and properly recorded in USofA nonoperating Account 426.4. Further, costs recorded in Account 426.4 should include "expenditures for the purpose of influencing public opinion . . . or for the purpose of influencing the decisions of public officials."[11] Conversely, costs for public relations activities, under certain parameters, are recordable in operating expense accounts and are recoverable in rates.[12]

10. While there is no brightline test differentiating (1) activities to influence public opinion and policymakers, which must be recorded in nonoperating Account 426.4; versus (2) recoverable public relations activities, which are recorded in operating accounts, the Commission has found that expenditures incurred to influence the opinion of the public that have "little or no benefit to the ratepayers . . . must be borne by

[9] Regarding regulated electric utilities, section 141.1 of the Code of Federal Regulations states "[e]ach Major and each Nonoperating (formerly designated as Major) electric utility . . . must prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions as provided in that form." 18 CFR § 141.1(b)(1)(i). The general instructions to the FERC Form No. 1 require utilities to "[p]repare this report in conformity with the Uniform System of Accounts (18 CFR Part 101) (USofA)" and to "[i]nterpret all accounting words and phrases in accordance with the USofA." Similar regulations and instructions apply to natural gas and oil pipeline companies.

[10] *Cf.* EEI Initial Comments at 6 (citing the Internal Revenue Code employed by the Internal Revenue Service).

[11] 18 CFR pts. 101, 201, Instructions to Account 426.4.

[12] 18 CFR pts. 101, 201, Instructions to Accounts 923 and 930.1; *see also Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC ¶ 61,218 (1982).

stockholders."[13] In addition, the U.S. Court of Appeals for the District of Columbia Circuit found that Account 426.4 should include utility "expenditures for the purpose of indirectly as well as directly influencing the decisions of public officials."[14] Specifically, the Court, in vacating an earlier Commission order, found that costs including those of hired public relations contractors to organize coalitions that would (1) conduct public opinion polls; and (2) run promotional advertisements to persuade state officials that were "persuasive rather than merely informative" should be in Account 426.4.[15] In addressing whether certain industry association costs are includable in rates in any future individual proceeding, the Commission will continue to rely on its regulations and the precedent interpreting those regulations.

<u>The Commission orders</u>:

(A) The Notice of Inquiry is hereby withdrawn, and Docket No. RM22-5-000 is hereby terminated, as discussed in the body of this order.

(B) The Petition in Docket No. RM21-15-000 is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner LaCerte is not participating.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

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[13] *N. Border Pipeline Co.*, 23 FERC ¶ 61,213, at 61,439 (1983).

[14] *Newman v. FERC*, 27 F.4th 690, 697 (D.C. Cir. 2022).

[15] *Id.* at 694, 697.

Note: The following appendix will not appear in the Federal Register

Appendix

List of commenters in Docket No. RM21-15-000:

American Gas Association
Appalachian Voices
Center for Biological Diversity
Citizens Utility Boards of Illinois, Michigan, Ohio, and Wisconsin
Clean Air Carolina
Dana Investment Advisors
Duke Energy Business Services, LLC, on behalf of Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC
E9 Insight
Edison Electric Institute
Food and Water Watch
Indicated PJM Transmission Owners[16]
Interfaith Center on Corporate Responsibility
Interstate Natural Gas Association of America
Ipsun Solar
Ken Clark
Maryland Office of People's Counsel
National Grid USA
National Whistleblower Center
NC Warn

[16] The Indicated PJM Transmission Owners for Docket No. RM21-15-000 are: American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc. (collectively "AEP"); Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation.

New York Transmission Owners[17]
Nuclear Energy Institute
Office of Ohio Consumers' Counsel
Office of the Nevada Attorney General, Bureau of Consumer Protection
Oregon Citizens' Utility Board
Pennsylvania Utility Law Project
Public Interest Organizations[18]
Small Business Utility Advocates
Solar Energy Industries Association
Solar United Neighbors
Sunnova Energy International Inc.
The Utility Reform Network
Union of Concerned Scientists
U.S. Senators Sheldon Whitehouse, Jeffrey A. Merkley, Edward J. Markey, Jack Reed, and Bernard Sanders
Vote Solar, Institute for Local Self-Reliance, and Partnership for Southern Equity, et al.
WIRES

List of commenters in Docket No. RM22-5-000:

313 Organizations
American Gas Association
Alliance for Affordable Energy
Alliant Energy Corporate Services, Inc.
Ameren Services Company, on behalf of Ameren Illinois Company d/b/a Ameren Illinois, Union Electric Company d/b/a Ameren Missouri, and Ameren Transmission Company of Illinois
American Forest & Paper Association
American Public Power Association
Aurora Solar Inc.
Center for Biological Diversity
Christopher Lish

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[17] The New York Transmission Owners are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation d/b/a National Grid; New York Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Long Island Power Authority; and Rochester Gas and Electric Corporation.

[18] The Public Interest Organizations in Docket No. RM21-15-00 are: Earthjustice; Sierra Club; Clean Air Council; Friends of the Earth; POWER Interfaith; and Southern Environmental Law Center.

Citizens Utility Board of Ohio
Climate Solutions
Consumer Coalition for Electricity Rate Transparency
Consumers Energy Company
Dana Investment Advisors
DTE Electric Company and DTE Gas Company
Duke Energy Business Services, LLC, on behalf of Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC
E9 Insight
EarthRights International
Edison Electric Institute
Energy Alabama
Electric Power Research Institute
Energy Producers and Users Coalition[19]
Entergy Services, LLC
Harvard Electricity Law Initiative
People of the State of Illinois, by Illinois Attorney General
Illinois Citizens Utility Board[20]
Interstate Natural Gas Association of America
Institute for Local Self-Reliance
Interfaith Center on Corporate Responsibility
ITC Holdings Corp.
Joint Consumer Advocates[21]
Joint RTO Commenters[22]

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[19] Energy Produces and Users Coalition are: California Resources Corp.; Chevron U.S.A. Inc.; PBF Holding Company; Phillips 66 Company; and Tesoro Refining & Marketing Company LLC.

[20] Illinois Citizens Utility Board filed on behalf of Sophia Mayen, Mary Bednarz, Gabe Landes, Jim Chilsen, Gillian Nazareth, Thomas Carleton, Dan Fatton, Deborah Kratzer, Robert Altenburg, Joseph Womble, Sarah Fischell, Perry Grossman, Kelly Lyndon.

[21] Joint Consumer Advocates are: Office of the People's Counsel for the District of Columbia; Iowa Office of Consumer Advocate; New Hampshire Office of the Consumer Advocate; New Jersey Division of Rate Counsel; South Carolina Office of Regulatory Staff; and the Public Utility Law Project of New York.

[22] The Joint RTO Commenters: are PJM Interconnection, L.L.C.; California Independent System Operator Corporation; Midcontinent Independent System Operator, Inc.; and Southwest Power Pool, Inc.

Joy Loving
KYSEIA
Louisiana Public Service Commission
Michael Mabee
Michigan Attorney General Dana Nessel and Citizens Utility Board of Michigan
MISO Transmission Owners[23]
Missouri Solar Energy Industries Association
National Grid USA on behalf of Niagara Mohawk Power Corporation; New England Power Company; New England Electric Transmission Corporation; New England Hydro-Transmission Corporation; New England Hydro-Transmission Electric Company, Inc.; The Narragansett Electric Company; Massachusetts Electric Company; Nantucket Electric Company; and National Grid LNG LLC.
National Rural Electric Cooperative Association
NC Warn
New England Consumer-Owned Systems[24]

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[23] MISO Transmission Owners in Docket No. RM22-5-000 include: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Great River Energy; GridLiance Heartland LLC; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[24] New England Consumer-Owned Systems are: Block Island Utility District; Braintree Electric Light Department; Chicopee Electric Light Department; Georgetown Municipal Light Department; Hingham Municipal Lighting Plant; Littleton Electric Light and Water Department; Merrimac Municipal Light Department; Middleborough Gas & Electric Department; Middleton Electric Light Department; North Attleborough Electric Department; Norwood Municipal Light Department; Pascoag Utility District; Reading Municipal Light Department; Taunton Municipal Lighting Plant; Wallingford Electric

Nexamp, Inc.
Nuclear Energy Institute
Office of the Nevada Attorney General, Bureau of Consumer Protection
Office of the Ohio Consumers' Counsel
Office of the People's Counsel for the District of Columbia and the New Jersey Division of the Rate Counsel
Oregon Citizens' Utility Board
Pennsylvania Utility Law Project
PJM Transmission Owners[25]
Prosperity Works
Public Citizen, Inc.
Public Interest Organizations[26]
Public Utilities Commission of Ohio
Rábago Energy LLC
Keryn Newman, Alison Haverty, and Martha Peine
Robin Happel
Small Business Utility Advocates
Solar Rights Alliance
Southwest Power Pool, Inc. (SPP) Transmission Owners[27]

Division; Wellesley Municipal Light Plant; and Westfield Gas & Electric Light Department.

[25] The Indicated PJM Transmission Owners in Docket No. RM22-5-000 are: American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company, LLC; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; and Public Service Electric and Gas Company.

[26] Public Interest Organizations in Docket No. RM22-5-000: are Earthjustice; Sierra Club; POWER Interfaith; Clean Air Council; and Friends of the Earth.

[27] The SPP Transmission Owners are: American Electric Power Service

State Agencies[28]
State Solar Trade Associations and Organizations[29]
Sunnova Energy International Inc.
The Utility Reform Network (TURN)
Union of Concerned Scientists
U.S. Senators Sheldon Whitehouse, Jeff Merkley, Edward J. Markey, Dianne Feinstein, Elizabeth Warren, and Bernard Sanders
U.S. Congress Members Sean Casten, Kathy Castor, and Jamaal Bowman, Ed.D.
Virginia Advocacy Organizations[30]
Virginia Office of the Attorney General, Division of Consumer Counsel
Virginia Poverty Law Center
Vote Solar
WIRES

Corporation, on behalf of its affiliates, Public Service Company of Oklahoma and Southwestern Electric Power Company, and Xcel Energy Services Inc., on behalf of Southwestern Public Service Company.

[28] State Agencies are: Massachusetts Office of the Attorney General; California Public Utilities Commission; Connecticut Department of Energy and Environmental Protection; Connecticut Office of Consumer Counsel; Delaware Attorney General; Delaware Department of Justice, Delaware Division of the Public Advocate; Maryland Office of the Attorney General; Maryland People's Counsel; Michigan Department of Attorney General; Minnesota Attorney General; Attorney General of Oregon; State of Rhode Island.

[29] State Solar Trade Associations and Organizations are: Arizona Solar Energy Industries Association; Citizens Action Coalition of Indiana; Equitable Solar Solutions / Coldharbour Institute; Florida Olar Energy Industries Association; Georgia Solar Energy Association; Great Lakes Renewable Energy Association; Grid Alternatives; Illinois Solar Energy Association; Midwest Renewable Energy Association; New Jersey Solar Energy Coalition; Northern California Solar Energy Association; New York Solar Energy Industries Association; Renewable Energy Industries Association of New Mexico; and Texas Solar Energy Society.

[30] The Virginia Advocacy Organizations are: Appalachian Voices; Clean Virginia; Climate Action Alliance of the Valley; Community Climate Collaborative; Faith Alliance for Climate Solutions; Lynnhaven River NOW; Piedmont Environmental Council; Rockbridge Area Conservation Council; Siera Club, Roanoke Chapter; Virgina Grassroots Coalition, Climate and Clean Energy Working Group; Virginia Interfaith Power and Light; Virginia League of Conservation Voters; and Virginia Organizing.

United States Senate
WASHINGTON, DC 20510

February 25, 2022

Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426
Docket No.RM22-5-000

Dear Chairman Glick:

We are encouraged by the recent Federal Energy Regulatory Commission (FERC) Notice of Inquiry (NOI) on how utilities account for industry trade association dues, as well as civic and political activities. For too long, utilities have financed the political activities of trade associations using funds from captive ratepayers. These trade associations then lobby for policies that frequently run counter to ratepayers' interests. FERC should develop bright line for how utilities classify operating and non-operating expenses so that it is clear what can and cannot be recovered from ratepayers. Given the increasingly political nature of utility trade associations, we also urge FERC to treat trade association dues as non-operating expenses and therefore presumptively not recoverable from ratepayers.

The Supreme Court has called into question whether organizations can require unwilling participants to contribute funds that it uses for political activities. In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), the Supreme Court decided that public sector employees cannot be required to pay any portion of union dues because the unions could be engaged in political activities they may not support. While we disagree with the Court's decision, it reasons that utility ratepayers, who may not support the political activities of their utility's trade associations, should not be required to pay any portion of the trade association's dues.

Yet current law allows utilities to do just that. FERC's Uniform System of Accounts (USofA) states that "operating expenses," including "membership fees and dues in trade, technical, and professional associations paid by a utility for employees," may be recovered through rates charged to customers.[1] Non-operating expenses are not recoverable. These include "expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances… or for the purpose of influencing the decisions of public officials…."[2] Trade associations, so-called social welfare organizations, and some nonprofit groups are increasingly political, and many of their activities can be viewed as seeking to influence public opinion or decisions of public officials. Such organizations, however, view their activities not through the lens of the USofA, but rather the IRS definition of lobbying. This gap allows trade associations to characterize their activities in a

[1] 18 C.F.R. pt. 101, Account 930.2
[2] 18 C.F.R. pt. 101, Account 426.4

manner that, under the current system, permits utilities to pass along much of their association dues to their ratepayers – even for political activities with which they disagree.

There are numerous examples of organizations to which utilities commonly pay dues or make donations that have engaged in political activity that is against the interest of ratepayers.

- The Edison Electric Institute (EEI) is a trade association that represents electric investor-owned utilities. It "provides public policy leadership, strategic business intelligence, and essential conferences and forums." The NOI notes a National Association of Regulatory Utility Commissioners audit that regulators relied on to find EEI spent up to 50 percent of its income on advocacy and lobbying; however, in an invoice to one of its investor-owned utilities, it attributed only 7 percent of dues to lobbying. The other 93 percent of its dues counted as an operating expense.[3] EEI also helped to finance the now defunct Utility Air Regulatory Group, which opposed over 200 clean air and public health matters.

- The U.S. Chamber of Commerce is by far the largest lobbying organization in the country.[4] It also engages in electioneering, litigation, and general influencing activities. It has been at the forefront of efforts to kill climate action, from organizing the effort to block the Obama administration's greenhouse gas regulations[5] to leading the charge against the Build Back Better Act,[6] which if passed would devote $550 billion to fighting climate change. According to a disclosure by Sempra Energy, only 20 percent of the $1.02 million it paid in dues to the Chamber in 2020 was non-tax deductible.[7] While that 20 percent may reflect the IRS definition of lobbying and electioneering, 100 percent of dues paid to the Chamber go towards influencing activities. The Chamber exists to influence – that is its very purpose.

- Among its activities, the American Gas Association (AGA) advocates against updates to building codes that would result in more efficient or all-electric energy codes. Updated codes save consumers money, improve public health, and reduce greenhouse gas emissions. Yet AGA's Codes and Standards team, a team outside of its Governmental Affairs and Public Policy division, has a "primary goal … to retain the option of placing a natural gas appliance in homes and businesses." It also coordinates with anti-

[3] Federal Energy Regulatory Commission Docket No. RM22-5-000, Notice of Inquiry, page 13
[4] Open Secrets, https://www.opensecrets.org/federal-lobbying/top-spenders?cycle=a
[5] "Move to Fight Obama's Climate Plan Started Early," New York Times, August 3, 2015, https://www.nytimes.com/2015/08/04/us/obama-unveils-plan-to-sharply-limit-greenhouse-gas-emissions.html
[6] "U.S. Chamber Vows to Defeat Reconciliation, Hails Voting Deadline for Bipartisan Infrastructure Deal," U.S. Chamber of Commerce, August 24, 2021, https://www.uschamber.com/infrastructure/us-chamber-vows-defeat-reconciliation-hails-voting-deadline-bipartisan-infrastructure
[7] https://www.sempra.com/sites/default/files/content/files/node-media-document/2021/2020%20Sempra%20Energy%20Political%20-%20combined.pdf

electrification front groups like Partners for Energy Progress.[8] It is unclear whether AGA identifies its advocacy as lobbying or how it classifies the work of its Codes and Standards team. No independent audit has been performed.[9]

- Two PJM member utilities formed the Potomac-Appalachian Transmission Highline (PATH), LLC to build a multi-state transmission line. From 2009 to 2011, PATH spent more than $6 million on public relations contractors to pressure state officials to provide the necessary certificates for the project. The contractors produced promotional materials, ran public opinion polls, enlisted individuals to join supportive "reliable power coalitions", and hired lobbyists. The utilities booked these costs as recoverable. Most recently, FERC issued orders agreeing with the utilities' approach. In December 2021, the D.C. Circuit vacated and remanded FERC's orders and required the utilities to reimburse their customers for these charges because they were used for political activities.[10]

Updating the USofA to fully encompass all influencing activities will provide FERC with the requisite information to ensure utility rates are just and reasonable. It can also aid state commissions in their oversight of non-FERC jurisdictional utilities.

FERC must also deem industry association dues as presumptively non-recoverable. Without this change, it will remain incumbent on ratepayers and their advocates to call attention to accounting violations. FERC is standing up its Office of Public Participation to engage members of the public in its proceedings, and we commend it for appointing a director and deputy director. Even with the Office of Public Participation, however, most ratepayers will still not have the time or means to intervene in utility rate cases. The only way to provide the transparency needed to ensure just and reasonable rates is to deem association dues as presumptively non-recoverable.

Characterizing industry association dues as presumptively non-recoverable does not mean that utilities cannot recover these expenses. It only means that they must justify dues as truly operational and not political in nature. If utilities choose to engage in industry associations, then it should be incumbent on utilities to disclose and justify what they want to charge to customers.

We look forward to your next steps.

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8 Federal Energy Regulatory Commission Docket No. RM21-15-000, Comments of Public Interest Organizations, April 27, 2021 page 14

9 Federal Energy Regulatory Commission Docket No. RM21-15-000, Comments of Public Interest Organizations, April 27, 2021 page 14

10 Newman v. FERC. United States Court of Appeals, No. 20-1324 (2021). https://www.cadc.uscourts.gov/internet/opinions.nsf/CEEC71D3AAB2CAE9852587B900589358/$file/20-1324-1928335.pdf

Sincerely,

Sheldon Whitehouse
U.S. Senator

Jeff Merkley
U.S. Senator

Edward J. Markey
U.S. Senator

Dianne Feinstein
U.S. Senator

Elizabeth Warren
U.S. Senator

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Overview

The Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide safe, reliable electricity for 250 million Americans and operate in all 50 states and the District of Columbia. Powering the energy of every day, the electric power industry supports more than 7 million jobs and drives American economic growth and prosperity.

Website
http://www.eei.org

Verified page
June 10, 2024

Industry
Utilities

Company size
51-200 employees
392 associated members

Headquarters
Washington, DC

Founded
1933

Specialties
regulation, legislation, administrative law, electric power, generation, transmission, strategy, FERC, DOE, CFTC, NERC, FCC, and NARUC

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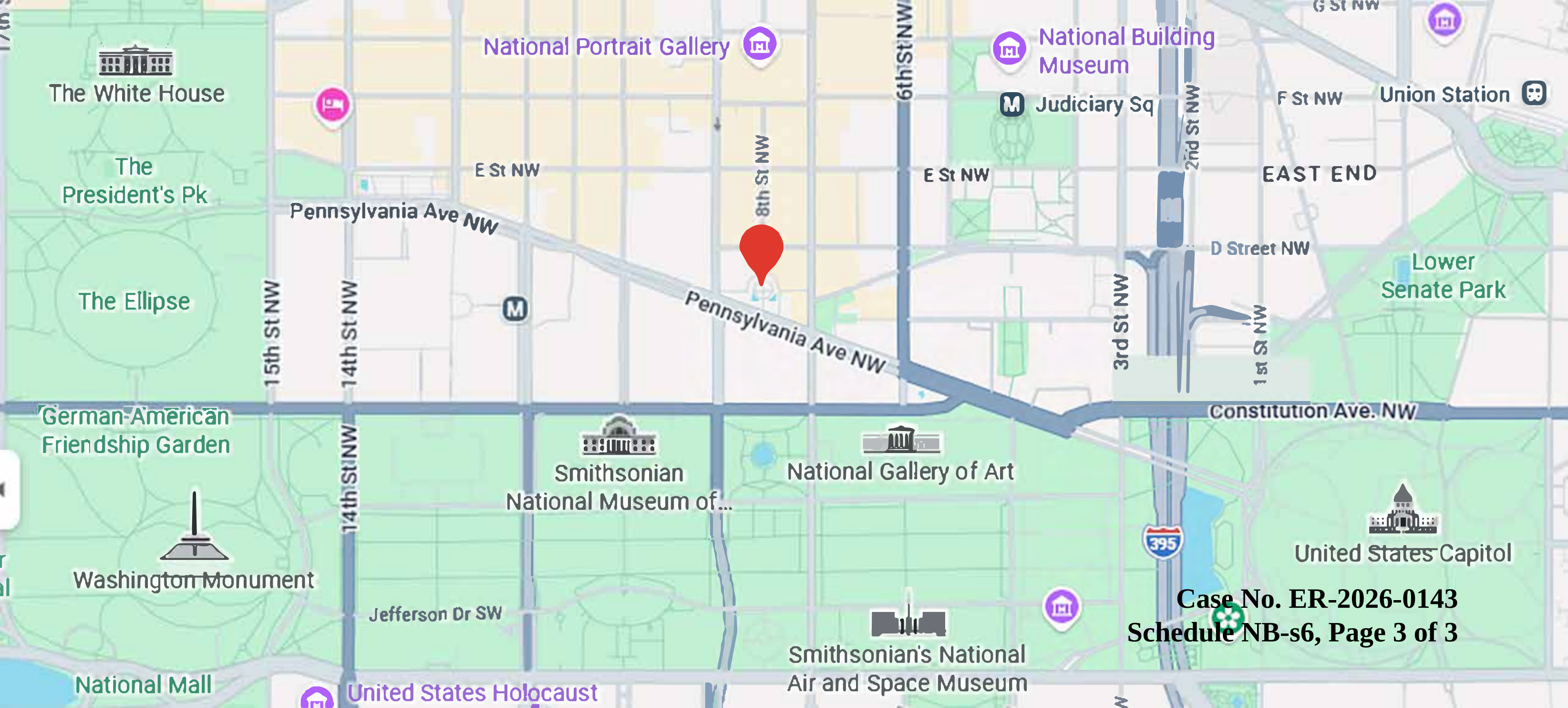

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