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**

PETITION TO INTERVENE AND
JOINT COMMENTS OF RATEPAYERS

The Ratepayers hereby submit these joint comments in accordance with the Commission's Notice of Inquiry issued December 16, 2021, in the above captioned proceeding. Ratepayers are, jointly and individually, electric ratepayers who have examined the formula rate annual updates of certain electric utilities, obtained documentation of expenses through the utility's formula rate implementation protocols, and filed successful formal challenges with the Commission that have resulted in more than $10M in refunds to electric consumers, plus interest.

Ratepayers Keryn Newman and Alison Haverty successfully challenged lobbying, influencing, advertising, and membership expenditures made by Potomac-Appalachian Transmission Highline in Docket No. ER09-1256. Ratepayer Martha Peine successfully challenged similar expenditures made by American Electric Power in Docket No. ER07-1069.

While engaged in this activity, Ratepayers have examined payments to industry trade associations, as well as other utility and utility employee memberships. Furthermore, Ratepayers have raised successful challenges to utility expenditures that belonged in the 426 account series, but were inappropriately booked to operating accounts included in utility formula rates. Ratepayers have extensively studied the Commission's electric rates (particularly formula rates), the Uniform System of Accounts, and related precedent. Ratepayers have standing to participate in this rulemaking.

I. PETITION TO INTERVENE

For the reasons set forth above, Keryn Newman, Alison Haverty and Martha Peine hereby move to intervene in this proceeding.

II. INTRODUCTION

On March 17, 2021, The Center for Biological Diversity ("Center") filed a rulemaking petition in Docket No. RM21-15, asking that industry association dues be moved from Uniform System of Accounts ("USoA") Account 930.2 to Account 426.4. The Petition took a distinctly partisan tone in a barely concealed effort to financially starve industry associations that the Center disagrees with ideologically.[1] The Center also made free speech arguments that have a questionable relationship to regulatory accounting. However, the Center's arguments regarding the Commission's USoA and ratemaking process demonstrate a fundamental misunderstanding of how rates actually operate. Perhaps this stems from the Commission's own confusion about how expenditures are included or excluded from formula rates in several of its Opinions that were recently vacated by the U.S. Court of Appeals for the D.C. Circuit.[2]

Ratepayers assert that the Center's recommended method of recording all industry association dues in Account 426.4 contravenes both the USoA and the ratemaking process and would result in the arbitrary exclusion of all industry association dues from utility formula rates. In short, industry association dues would become unrecoverable in their entirety unless allowed by the Commission when setting a stated rate. We do, however, recognize that industry

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[1] "EEI leadership has also publicly denied human-caused climate change, and EEI funded a nationwide campaign to sow public doubt about climate science." Center for Biological Diversity Petition for Rulemaking, Docket RM21-15, March 17, 2021 at 10. See also pages 11-14.
[2] *Newman v. Fed. Energy Regulatory Comm'n*, No. 20-1324 (D.C. Cir. Dec. 28, 2021).

association dues have been incorrectly recorded in the past, which has resulted in over recovery. But short of requiring the Commission to engage in a ratemaking proceeding for every utility every year, the Center's solution fails. We propose other options for correcting the current ambiguity surrounding accounting classification of industry association dues in order to assure that utility rates are just and reasonable.

III. STATED RATES VS. FORMULA RATES

A utility's rate is set by the Commission during a ratemaking proceeding and may not change until a new rate is filed and approved by the Commission. Utilities generally use one of two ratemaking schemes to collect their costs. One such method is a stated rate. Another popular method is a formula rate. The Commission's recoverability determinations, whether for a stated rate or a formula rate, may only come at the time the rate is set during a Section 205 ratemaking proceeding.

A. Stated Rates

When filing a stated rate a utility presents its anticipated yearly costs, sorted according to the USoA, based on a test year of recent expenditures. When setting the rate, the Commission arrives at a dollar figure of allowed expenditures. In arriving at the amount of the rate, the Commission may include or exclude expenditures in any account. This ratemaking proceeding is the only opportunity for the Commission to scrutinize expenditures placed in Account 426.4 and to require the utility to justify their recovery. However, a recoverability determination made during a Section 205 ratemaking does not change the account classification. Even if the Commission found expenditures in Account 426.4 to be recoverable during a ratemaking, it does not change the accounting classification of the expense. The expenditure would still belong in

Account 426.4, however the Commission may find amounts recorded in Account 426.4 to be recoverable during a ratemaking proceeding.

Once the Commission arrives at a just and reasonable stated rate, it doesn't matter in which account the utility records its future expenditures; the utility will still receive the same rate amount until a new rate is approved. There is no yearly opportunity for the utility to make a showing that new amounts recorded to Account 426.4 and excluded from the rate are recoverable. The rate is fixed.

B. Formula Rates

A formula rate is not based on a dollar amount, but on a mathematical formula that calculates a new rate amount each year based on the utility's expenditures as recorded using the USoA.[3] When the Commission sets a formula rate, it approves the formula (not a numerical rate), which may not change absent a new ratemaking proceeding. The formula is the rate, not the dollar figure it produces. A formula rate includes the USoA accounts that are recoverable, not individual expenses. A utility must justify recovery of each account in the formula during the ratemaking proceeding. Formula rates include or exclude accounts in their entirety, with one notable exception for Account 930.1. Accounts included are part of the formula and the use of account numbers to determine recoverability of expenses "prevents a utility from utilizing excessive discretion in determining the ultimate amounts charged to customers."[4] Once the formula is approved, the utility's rate is fixed.

We are unaware of any formula rate that includes accounts in the 426 series. If a utility's formula rate does not include Account 426.4, then all amounts recorded there are excluded from

[3] *Public Utilities Com'n of Calif. v. F.E.R.C.*, 254 F.3d 250, 254 (D.C. Cir. 2001).
[4] *Id.*

recovery. Because formula rates do not include Account 426.4, industry association dues recorded in Account 426.4 would remain unrecoverable.

A utility with a formula rate must file yearly updates to its revenue requirement, according to the approved formula. The yearly updates are informational only; they are not a Section 205 ratemaking proceeding where the Commission can change the accounts included in the formula, or make new recoverability determinations. A ratepayer with standing may file a Formal Challenge to the formula rate annual update, however that also cannot change the formula rate and is not a Section 205 or Section 206 filing.[5]

The Commission cannot make a recoverability determination during a formula rate annual update to include expenses **properly** recorded in an excluded account by simply changing their accounting classification to an included account (such as moving expenses from Account 426.4 to 930.2). Recoverability determinations for formula rate expenses are made by selecting which accounts to include in the formula at the time it is approved. While the Commission can determine whether specific expenses were **properly** recorded to the correct USoA accounts within the context of a formula rate update formal challenge, it cannot change which accounts are recoverable pursuant to the preapproved formula rate.

The Commission does not examine formula rate annual updates and approve them. The new revenue requirement goes into effect "…without notice to the Commission, provided those changes are consistent with the formula."[6] Thus, recording all industry association dues to account 426.4 would have the effect of excluding them from recovery in their entirety. There is

[5] "Any modification to the Formula Rate shall be made through a Federal Power Act Section 205 or Section 206 filing, and not through the Initial Annual Update, a subsequent Annual Update, a Preliminary Challenge, a Formal Challenge or a True-up Adjustment." PJM OATT Attachment H-19-B, II(C).

[6] Ala. Power Co. v. FERC, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993) (quoting San Diego Gas Elec. Co., 46 FERC ¶ 61,363, at 62,129-30 (1989)).

no yearly opportunity for the utility to justify adding a portion of its industry association dues in its rate.

IV. <u>THE UNIFORM SYSTEM OF ACCOUNTS</u>

A. <u>Account 930.2</u>

The Commission's USoA lists dues for company memberships as a recoverable operating expense in Account 930.2, Miscellaneous General Expenses.[7] However, the text of Account 930.2 does not instruct that portions of such dues for the purpose of lobbying and influencing be placed in Account 426.4. The Commission's instruction to record the portion of industry association dues related to lobbying and influencing in Account 426.4 comes through its Orders.

Order No. 276 provides a list of expenditures that should be placed in Account 426.4. The list includes, "[m]embership fees in organizations engaged in lobbying on legislative matters."[8] In *Delmarva Power & Light Co*., the Commission found that "…contributions used for lobbying activities *may not, under any circumstances*, be included in the utility's cost-of-service."[9] It is therefore common, but not required, that an industry association that engages in lobbying will include a note on its invoice to the utility informing the percentage of its dues for that year which are expected to be spent on lobbying. When this system works, the utility would record the lobbying portion to Account 426.4, with the remainder to Account 930.2. However, our experience examining the recording of industry association dues has shown that a common error is to record the entire dues payment to Account 930.2, and ignore the note on the invoice. A poorly trained accountant assigning expenses using the USoA would have no way of knowing the purpose of the invoice note, or that further calculation is required, because the text of

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[7] 18 CFR pt. 101, Account 930.2.
[8] *Expenditures for Political Purposes — Amendment of Account 426*, *Other Income Deductions*, *Unif. Sys. of Accounts, and Report Forms Prescribed for Elec. Utils. and Licensees and Nat. Gas Cos. — FPC Forms Nos. 1 and 2*, Order No. 276, 30 FPC 1539 (1963).
[9] *Delmarva Power & Light Co.*, 58 FERC ¶ 61,169, at 61,509 (1992).

Account 930.2 makes no mention of it. Accounting assignments don't appear to go through any sort of review process at the utility that would catch this error. It may be that if such an assignment doesn't cause the utility to go over budget, nobody cares all that much.

B. <u>Account 426.5</u>

Another common error related to company memberships is to record memberships in non-industry civic and social organizations, memberships for the purpose of building advocacy to influence public officials, and membership contributions "for corporate stewardship" in Account 930.2 because there is no other reference for company memberships to be found in the Commission's USoA. In Opinion No. 554, the Commission found that these memberships should be recorded in Account 426.5, Other Deductions.[10] Account 426.5 is a residual miscellaneous account for non-operating expenses that do not belong in other 426 accounts.[11]

C. <u>Account 921</u>

USoA Account 921, Office Supplies and Expenses, lists "[m]embership fees and dues in trade, technical, and professional associations paid by a utility for employees," but includes the note "(Company memberships are includible in account 930.2.)"[12] Despite what appears to be unambiguous language that differentiates between individual employee memberships and company memberships, we have found company memberships recorded in Account 921 and recovered as an operating expense.

D. <u>Account 930.1</u>

USoA Account 930.1 is for General Advertising "…of a good will or institutional nature…"[13]. Account 930.1 contains a Note B that advises "…advertising designed to solicit

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[10] *Potomac-Appalachian Transmission Highline, LLC*, Opinion No. 554 at 75, 158 FERC ¶ 61,050 (2017).
[11] 18 CFR pt. 101, Account 426.5.
[12] 18 CFR pt. 101, Account 921.
[13] 18 CFR pt. 101, Account 930.1.

public support or the support of public officials in matters of a political nature" be recorded in Account 426.4. Therefore, the portion of membership dues that pay for advertisements that would fall under Note B should also be placed in Account 426.4.

E. <u>Account 426.1</u>

USoA Account 426.1 lists, "all payments or donations for charitable, social or community welfare purposes."[14] The account text seems unambiguous. There is no other account that lists donations within its text. All donations belong in Account 426.1. Recording donations elsewhere is not the fault of the USoA's wording.

F. <u>Account 426.4</u>

USoA Account 426.4 is for utility expenditures, including those payments it makes to others, for the purpose of influencing public opinion or the decisions of public officials. "[P]urpose to influence is the key feature of expenditures that belong in Account 426.4."[15] If the industry association dues are used for the purpose of influencing, then that portion belongs in Account 426.4.

1. <u>Industry Trade Association Invoicing</u>

There is currently a mismatch between industry association lobbying costs, which are defined by the IRS definition of lobbying, and the text of Account 426.4. Lobbying, as defined by the IRS, is but one small part of Account 426.4. It does not define all expenditures in the account. There are many ways to exert influence that do not involve legislation or elected officials.[16] Account 426.4 includes more than just lobbying, it includes influencing of public opinion and the decisions of public officials in general. In fact, Account 426.4 does not even contain the word "lobby", but instead defines the influencing activity itself and expands it

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[14] 18 CFR pt. 101, Account 426.1
[15] *Newman v. Fed. Energy Regulatory Comm'n*, P. 18, No. 20-1324 (D.C. Cir. Dec. 28, 2021).
[16] *Id.*

beyond the IRS definition. Because industry associations are using the IRS definition to flag such expenses, only the portion of their expenditures related to lobbying is deducted from Account 930.2, while their other influencing expenditures are inappropriately included in the account. Utilities themselves are subject to the whole of Account 426.4 and must record their influencing expenditures in Account 426.4. The industry associations should be held to the same standard because their expenses end up in utility accounts.

In a similar vein, utilities must record their donations in Account 426.1, however these donations may not be considered "lobbying" by industry associations and therefore may not be separated from amounts recordable in Account 930.2. But these donations do not belong in Account 426.4; industry association donations belong in Account 426.1. Industry association invoices do not contain a total of donations that should be recorded in Account 426.1.

The standard used by the industry association to separate its expenses on the invoices it sends to utilities for ratemaking purposes must be based on the USoA, not IRS regulations. This requires a change to the standard used for invoicing, not changes to the USoA. Even though the Commission may not have authority to dictate how industry associations invoice, utilities are nevertheless required to maintain proper documentation (see Transparency section below) because ratepayers cannot be held responsible for mystery expenses.

2. <u>Account 426.4 Exclusions</u>

The Commission seeks comment on the meaning of Account 426.4's third clause excluding "expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations."[17]

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

The clause refers to a reporting utility's direct regulatory expenses. Order No. 276 elucidated what this means and how it shall apply.

> "A principal source of criticism of the rules as originally proposed by the Commission was that the proposed Subaccount 426.4, relating to expenditures for political purposes, had been drafted in a manner which not only was ambiguous and indefinite as to exactly what expenditures were intended to be included, but also appeared to include expenditures – **of which regulatory expenses are typical** – which properly should be included in above-the-line operating expenses…"[18]

The Commission used regulatory expenses as an example of those expenditures that are excluded by Account 426.4's third clause. Regulatory Commission Expenses that are excluded from Account 426.4 belong in USoA Account 928,[19] and are limited to **the utility's** regulatory expenses. The regulatory expenses of industry associations, which are not utilities, have a questionable relationship to the provision of utility service to consumers and therefore the Commission should include expenditures of this nature in Account 426.4 because they are not excluded by the account's third clause. Utilities routinely represent themselves in regulatory proceedings. They do not require a third party, such as an industry association, to represent their interests. If they did however, those expenditures would be properly recorded to Account 928, not Account 930.2.

While utilities may recover their regulatory expenses incurred in the provision of utility service, that recovery should not extend to third parties through the payment of membership dues. This amounts to ratepayer funding of the regulatory expenses of non-utility third parties.

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[18] *Expenditures for Political Purposes — Amendment of Account 426*, *Other Income Deductions*, *Unif. Sys. of Accounts, and Report Forms Prescribed for Elec. Utils. and Licensees and Nat. Gas Cos. — FPC Forms Nos. 1 and 2*, at Page 2, Order No. 276, 30 FPC 1539 (1963).

[19] 18 CFR pt. 101, Account 928, Regulatory Commission Expenses. "This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, **incurred by the utility** in connection with formal cases before regulatory commissions…"

Industry associations have their own reasons for participating in the regulatory system, not all of which benefit ratepayers. If industry association regulatory expenditures may be recovered from ratepayers, why not the regulatory expenditures of every party who participates in the regulatory system? How would the Commission determine which party's regulatory expenses provide benefit to ratepayers? Other than utilities, no other party to this proceeding, or any other, is being reimbursed by ratepayers for their expenditures to participate.

Furthermore, perhaps the Commission should also revisit the question of whether the utilities themselves should recover regulatory expenditures from a proceeding where they have been found to have incorrectly recovered costs from ratepayers. It costs utilities nothing to engage in pitched legal battles with ratepayers responsible for funding their own participation. We pay to fight them, and we also pay them to fight us.

V. DEFINING INFLUENCING EXPENDITURES

In its Notice of Inquiry, the Commission seems poised to draw a bright line on the purpose of industry association expenditures paid by regulated utilities through dues. In the interest of fairness, the Commission should dig a little deeper than the obvious industry association lobbying and contributions and into some of the more subtle ways industry associations assert influence using public relations campaigns and propaganda.

In his 1963 concurrence on Order No. 276, Commissioner David S. Black stated:

> "The utilities and the advertising agencies have displayed great ingenuity in conveying a 'message' which is not always political in the ordinary sense of the word, but which concerns itself with problems of broad national social or economic policy. These efforts are intended to influence fundamental attitudes or beliefs and bear no reasonable relationship to the necessary operations of a utility company or the furnishing of utility service. The industry is, of course, free to

spend its money this way, but such costs should be reported as income deductions below the line."[20]

It may be helpful for the Commission to examine the history behind the creation of Account 426.4 in the early 1960s. At its core was a battle between publicly owned utilities and investor owned utilities. The investor owned utilities charged in consumer rates a campaign to influence legislators, regulators, and the general public to favor their side of the argument. Some examples of the kind of advertisements the Commission found objectionable can be seen in Attachment A, which consists of three advertisements which appeared in fold-out pamphlets mailed to electric customers of Potomac Edison between 1958-1961. The pamphlets were regularly included in customer bills, and featured calendars, local history, recipes, holiday greetings, and information about the wonders of electricity. As shown, the advertisements attempted to influence the reader in subtle, and not so subtle, ways.

In its inquiry into this matter, the Commission may want to consider the ways in which industry associations may undertake modern day campaigns to subtly influence legislators, regulators and the general public. The available vehicles for presenting persuasion have greatly expanded in today's modern world. The utilities and industry associations are no longer limited to mass communications media and news pamphlets included in customer bills, but can also peddle their influence electronically using social media. The Commission's inquiry should also consider how industry association social media campaigns might be used for the purpose of influencing fundamental attitudes or beliefs that can financially benefit their investor owned utility members.

[20] *Expenditures for Political Purposes — Amendment of Account 426*, *Other Income Deductions*, *Unif. Sys. of Accounts, and Report Forms Prescribed for Elec. Utils. and Licensees and Nat. Gas Cos. — FPC Forms Nos. 1 and 2*, Concurrence of Commissioner David S. Black, Order No. 276, 30 FPC 1539 (1963).

VI. PROPOSED CHANGES TO UNIFORM SYSTEM OF ACCOUNTS

Some of the accounting errors we illustrated in Section III can be ameliorated with simple changes to the text of the Uniform System of Accounts.

We propose that the Commission consider giving company memberships their own, specific, above-the-line account. Account 930.2 is a miscellaneous, residual account that also contains company expenses that have nothing to do with company memberships. In addition, company memberships also include dues paid to associations that do not lobby, influence, make donations, or participate in the regulatory process. If the Commission wishes to expand its guidance surrounding industry association dues, a new, specific account number for company memberships is preferred over adding copious limiting language to a miscellaneous, residual account. Any new account should contain a note advising that certain non-operating expenses be placed in the appropriate 426 subaccount.

In conjunction with this, we also recommend that the Commission create a new 426 subaccount for company membership amounts that are non-operating in nature. Instead of directing non-operating expenses to various other existing 426 subaccounts, the task could be accomplished with more clarity and greater simplicity by having the note point to a new 426 subaccount that details all non-operating industry association or company membership amounts.

Although influencing expenditures made by industry associations are already covered in the language of Account 426.4, other unrecoverable industry association expenditures may fall into different accounts, such as 426.1. Trying to amend Account 426.4 for this purpose in order to expand its reach blurs the lines between Accounts 426.1, 426.4, and others and is likely to result in future controversy.

Alternatively, we propose that the text of Account 930.2 be revised to include a note advising that the portion of industry association dues related to donations, lobbying, influencing, and regulatory proceedings be recorded in Accounts 426.1 and 426.4, respectively. We observe that USoA Account 930.1, General Advertising, contains a similar note.[21] However, we recommend that any note added to Account 930.2 avoid further confusion and ambiguity by more closely following the texts of Account 426.4 and 426.1 and not adding undefined words such as "lobbying" or "political." If the instruction to record a portion of industry association dues in Accounts 426.4 and 426.1 is included in the text of Account 930.2, and not simply sprinkled throughout the Commission's precedent (which may not be available to the accountant assigning account numbers), we believe many potential errors could be short circuited before they occur.

We also propose that company memberships for civic and social organizations, including memberships for the purpose of "corporate stewardship" or influencing the decisions of public officials, be specifically mentioned in Account 426.5's language, or better yet included in the new account 426 subaccount for non-operating company membership expenses. It may be a bridge too far to expect an accountant to intuit where such expenditures belong absent clear language in the USoA.

VII. PROACTIVELY PREVENTING ACCOUNTING MISTAKES

Perhaps the biggest improvement the Commission could make to ensure just and reasonable rates through the proper accounting classification of utility expenses is to require specific training for utility accountants recording invoices. Hiring a general accountant and

[21] "Note B: Exclude from this account and include in account 426.4, Expenditures for Certain Civic, Political and Related Activities, expenses for advertising activities, which are designed to solicit public support or the support of public officials in matters of a political nature." 18 CFR pt. 101, Account 930.1.

handing her a chart of accounts and a pile of invoices creates a plethora of accounting errors based on simple misunderstanding. Regulatory accounting is a whole different world than corporate accounting. Recording an invoice in an incorrect account may affect the profit margin of a corporation selling goods, but recording an invoice in an incorrect account for a regulated utility can result in over recovery from consumers. Someone at the utility must be held ultimately responsible for continued errors, whether it is the accountants, or the executives who give them incorrect instruction or pressure them to record invoices in incorrect accounts in order to hide things or to stay within budget.[22] Despite routine audits by the Commission and subsequent plans for correction, the same errors happen over and over again. Perhaps it's time to hold utilities that repeat negligent or willful accounting errors that result in over recovery responsible with fines or penalties.

VIII. TRANSPARENCY

An industry association's expenditures related to lobbying, influencing, and donations may fluctuate from year to year, requiring periodic updates to amounts split between various operating and non-operating accounts. The Commission already provides transparency in rates; it just takes a little bit of effort on the part of the ratepayer to examine the components of the rate paid.

A. Formula Rate Transparency

A utility with a formula rate must respond to information requests from entities with standing to examine and challenge the data inputs to the formula rate during each annual update,

[22] For example, "Even more concerning, several factual assertions agreed to by FirstEnergy in DPA and the remedies FirstEnergy agreed to undertake, point towards internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature, and purpose of the lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates." Docket No. FA19-1, Audit Report, Page 48.

in accordance with the formula rate's protocols.[23] The utility bears the burden of proving that it reasonably applied the terms of the formula rate, including whether the data was properly recorded, clearly identified, accurate and supported. Transparency of the utility's yearly expenditures is already adequately provided for in the protocols.

The Commission's USoA General Instructions pertaining to records defines the necessary proof a utility must possess to meet its burden.

> "A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.
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> B. The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction."[24]

Utilities are already required to provide information to support their accounting in order to meet the transparency provisions of their formula rates. However, in our experience the utility was unable to provide any detail past the industry association invoice, claiming that they don't have it. Requiring that utilities must possess and disclose necessary detail for company memberships during a formula rate update discovery process, or risk not being able to recover the expense, may be all that is required.

In its Notice of Inquiry however, the Commission floats the proposal to require "that utilities must include in … their supporting work papers to their formula rate annual updates, information similar to that requested in Question 5 above."[25] This requirement may be

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[23] Entities with standing include any "any person, including an end-use customer that will pay ... some portion of that rate when flowed into its retail bill." *American Electric Power Corporation*, 153 FERC ¶ 61,167 at 3, citing *PATH*, 140 FERC ¶ 61,229 at P 106 (2015.)
[24] 18 CFR pt. 101, General Instructions at 2 (A) and (B).
[25] Question 13(c) at Page 19.

duplicative since the information should already be available during discovery, however if the Commission proceeds with this requirement, we recommend the following:

Company memberships should be separated from all the other operating expenditures in Account 930.2 by assigning a new, specific operating account number for such expenditures. Then the new account could be detailed in an attachment to the formula rate similar to how expenditures for Account 930.1, General Advertising, are sorted for recovery in formula rates. The account, which is included in the formula rate in the Administrative & General ("A&G") line item, is further sorted in a worksheet attachment to categorize the expenditures. The worksheet sorts expenses by type, purpose, and definition and would provide additional transparency regarding the types of memberships being recovered. Note that the worksheet does not include expenditures that belong in Account 426.4, those are separated by a proper accounting classification. The Account 930.1 worksheet separates only Account 930.1 expenditures by category. Once the expenditures have been sorted on the worksheet, any unrecoverable categories may be subtracted from the Operations & Maintenance balance in a separate line item, if required. We have included the relevant pages from PATH's formula rate in Attachment B to illustrate this method.

Of course, any requirement to include new work papers would require a change to every utility formula rate. The Commission must balance increased transparency with the administrative burden of new formula rate proceedings.

B. Stated Rate Transparency

A utility with a stated rate must only provide transparency into its expenditures during its initial ratemaking proceeding. The Commission provides adequate discovery procedures for participants to examine supporting data and documents for expenses included in the rate.

Thereafter, the utility does not need to make any yearly filings. After a stated rate is set, transparency may be a moot point as the dollar amount of the rate may not change absent a new ratemaking proceeding. It doesn't matter how a utility with a stated rate accounts for its expenses because it cannot change the amount of its rate. However, without transparency it may be hard for others to tell if a utility's stated rate has become unjust and unreasonable. The Commission addressed similar transparency issues in *ISO New England, Inc.* by requiring the ISO to "prepare and post on its website a monthly report concerning 'external affairs' and 'corporate communications.'"[26] The Commission may want to consider a similar requirement for any utilities that have stated rates and pay membership dues to associations or organizations that engage in lobbying and influencing. However, it must be acknowledged that a utility with a stated rate cannot increase the amount it recovers if its membership dues increase year over year without making a new Section 205 rate filing. Adding transparency requirements to file or post new forms seems like a chore without a purpose.

C. <u>Accuracy of Information Provided</u>

While sunshine is the best disinfectant, would adding more transparency to industry association dues with requirements to produce more paper actually prevent ratepayer funding of unrecoverable activities? In its petition, the Center implies that the lobbying breakdown on industry association dues invoices is less than accurate.[27] Would more detail provided by the industry associations change this, short of looking at actual invoices from, and payments to, third party vendors? At some point, the Commission will have to find the level at which it trusts the information provided by non-jurisdictional industry associations. Can the utilities be held responsible for incorrect information provided by industry associations if they weren't involved

[26] *ISO New England, Inc.,* 117 FERC ¶ 61,070 (2006).
[27] Center for Biological Diversity Petition for Rulemaking at 20, Docket RM21-15, March 17, 2021.

in some huge conspiracy to illegally fund industry associations with consumer funds? If trust in non-jurisdictional associations to provide accurate information is low, perhaps the Commission should prohibit altogether the recovery of membership dues in industry associations that engage in lobbying, influencing, and regulatory advocacy, or make donations to other parties. Not all associations that utilities belong to engage in these practices. Our experience has found that a considerable portion of a utility's memberships can be non-political associations that can provide benefit to ratepayers. Industry trade associations, on the other hand, are more likely to engage in activities that are prohibited from recovery. It's a judgment call that must be made based on each individual membership. Perhaps a simpler solution would be to prohibit recovery of all membership dues in industry associations that engage in non-recoverable practices, and then wait for these associations to reform themselves into two distinct companies – one that influences, and one that doesn't. That could make a determination much easier than producing a blizzard of new reports to fill out.

IX. POLITICS HAS NO PLACE IN ACCOUNTING OR RATEMAKING

While the impetus for this inquiry may have been ideologically motivated, new policies developed must cut both ways. Industry associations do not only lobby and influence on behalf of the fossil fuel industry, but also exist to further the financial and political goals of renewable energy companies and environmental organizations. The Commission cannot engage in ideological advocacy by making partisan determinations of which associations benefit ratepayers based on preference for fuel source, or other political goals. All industry associations exist to benefit industry of some kind, and these behemoths are adept at framing member financial goals as beneficial to ratepayers. It's not a matter of "clean" or "dirty" energy; it's a matter of disallowing inappropriate recovery of influencing expenditures in consumer rates. It's a simple matter of who pays.

X. CONCLUSION

In today's politically charged society, the industry associations of yesteryear that engaged in research and standards development for the benefit of ratepayers have all but disappeared. The purpose of today's industry association is, first and foremost, to benefit its industry members. The time is ripe for the Commission to take action to update its policies regarding the recovery of industry trade association dues to ensure just and reasonable rates. Specifically, Ratepayers encourage the Commission to:

1. Ensure that any changes it makes accord with its ratemaking principles, process and procedure.
2. Create new USoA accounts specifically for company memberships, both operating and non-operating. This is preferable to altering numerous existing accounts.
3. Clarify that company membership expenditures must be classified for accounting purposes to agree with the USoA, not IRS or other standards.
4. Consider modern means, such as social media campaigns, used to influence legislators, regulators, and the public when defining non-operating influencing expenditures.
5. Clarify that regulatory expenses may only be recovered by utilities, and specifically disallow recovery of any and all expenses related to third-party participation in regulatory proceedings.
6. Hold utilities accountable by imposing fines or penalties for repeated, willful, or negligent accounting errors.
7. Disallow recovery of utility expenses related to participation in regulatory proceedings related to willful or negligent accounting errors.
8. Balance new transparency requirements with the burden of new rate proceedings.
9. Assure that all industry associations be held to the same rules regardless of the political popularity of the industry represented.

Respectfully submitted February 22, 2022,

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ATTACHMENT A

POTOMAC EDISON PAMPHLETS

June-July 1958

THE
MOST
PRECIOUS
GIFT
YOU CAN
GIVE
YOUR CHILD . . .

ONE WAY YOU MAY NOT HAVE THOUGHT OF . . .

June-July 1958

From that first wonderful day when he drops your guiding hand to walk alone, unsteady, unsure, but on his own — his goal is independence.

And this is yours to give — even as he falters and clings, then manfully struggles on. You want so much to help him. And your heart nearly bursts with pride one day when you know he's now "his own man." How fervently you pray that no one — ever — will take away this hard-won freedom to be himself.

There's one way you may not have thought of to help him continue to enjoy the independence he's achieved.

Be on the watch for ideas that could deprive him of it — the idea, for example, that "government should run such and such — a business, a service, an institution." You have only to remember the people in socialist nations to know that when government controls more and more things, there is less and less freedom and independence for the individual!

You can use your power to discourage this idea that "the government should run it." When you hear people talk that way, point out that the loss of anybody's independence is a threat to everybody's freedom.

Very much aware of this danger are the independent electric light and power companies, such as the one that serves you, because government already runs part of the electric business, and powerful people are pressing to take over more.

Cover Photo

"Fort McCord" was built in 1790 by an ancestor of the present owners, the D. W. Rumlers. Located near Chambersburg, Pa., Fort McCord is built on the site of an old fort, destroyed by Indians in 1756.

ONE WAY YOU MAY NOT HAVE THOUGHT OF . . .

April-May 1959

THEY SPEND ...

TILL IT HURTS YOU

Will you help BLOW THE WHISTLE?

April-May 1959

IT'S YOUR MONEY!

Five and one-half billion dollars in tax money is a big enough amount to hurt every U. S. family that has to help pay it. Yet that much tax money has already been poured into unnecessary federal "public power" dams and plants.

The lobbyists for federal "public power," the bureaucrats and the socialists, keep pressing Congress to spend tax money like this, even though there's no need for it. The independent electric companies are ready and able to provide all the electricity the nation needs — without your tax money.

Save Your Taxes . . .

Whether you live in Maryland, Pennsylvania, West Virginia, or Virginia, it's YOUR TAX MONEY that pays the electric bill for someone who lives in a federal "public power" region such as the Tennessee Valley Authority!

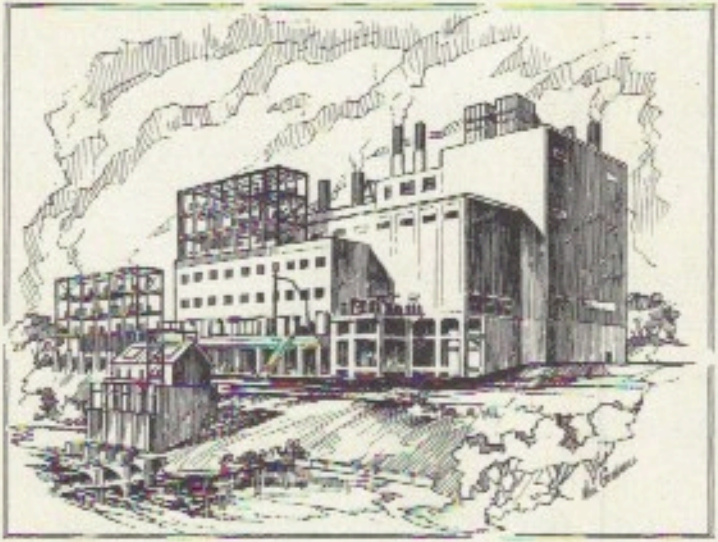
Help correct this situation — write your Congressman today and tell him you oppose this wasteful use of your money!

Cover Photo

The annual Winchester, Va., Apple Blossom Festival draws visitors from all parts of the nation. This year the Festival will be held April 30 and May 1. Our cover photo shows the finale of the big pageant in 1958.

Will you help BLOW THE WHISTLE?

YOUR INVESTOR - OWNED ELECTRIC COMPANIES



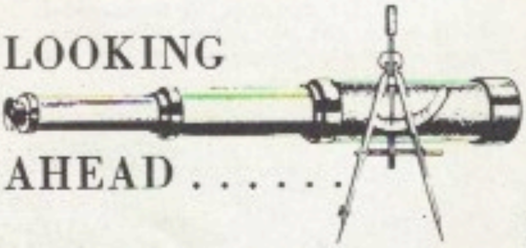
The R. Paul Smith Power Station at Williamsport, Maryland, generates over half of the system's total requirements for electricity.

ARE "POWERING - UP" FOR YOUR FUTURE!

AS LONG AS IT'S BUSINESS-MANAGED --
ELECTRICITY IS IN GOOD HANDS

February-March 1961

LOOKING AHEAD . . . . . .



LOOKING AHEAD . . . Your investor-owned electric companies are constantly looking ahead, planning and building new generating plants, new transmission line networks, new facilities of every type to assure you and your family of a continued abundance of electricity.

TODAY . . . Today the need for electricity has become increasingly important in the way we all work and live — and its importance will continue for years to come.

TOMORROW . . . Even though the electric power capacity of the United States is about three times greater than that of Russia (the second ranking nation), even greater progress is scheduled for our nation's "tomorrow." For example:

> In 1980 each one of us will have available electricity equal to the energy of 176 men . . . electricity working for us in the home, on the job.
>
> Electricity available from nuclear power plants will grow tremendously from 65,000 kilowatts in 1980.
>
> As in the past, the funds needed to build the power plants of the future will be provided by the millions of Americans who voluntarily invest their savings in electric company stocks and bonds. This is the foundation of America's leadership in electric power supply.

REST ASSURED . . . Rest assured that your local electric light and power companies and *all* of the investor-owned electric companies in our nation stand ready to meet in full the future power needs of all Americans. The power capacity to supply America's needs can be provided best under the free enterprise system!

AS LONG AS IT'S BUSINESS-MANAGED -- ELECTRICITY IS IN GOOD HANDS

ATTACHMENT B

SAMPLE FORMULA RATE PAGES
FOR CLASSIFYING EXPENSES WITHIN AN ACCOUNT

Attachment A

Formula Rate - Non-Levelized — Rate Formula Template

Utilizing FERC Form 1 Data

0

PATH West Virginia Transmission Company, LLC

	(1)	(2)	(3)	(4)		(5)
		Form No. 1				**Transmission**
		Page, Line, Col.	**Company Total**	**Allocator**		(Col 3 times Col 4)
43	O&M					
44	Transmission	321.112.b	-	TE	1.00000	-
45	Less Account 565	321.96.b	-	TE	1.00000	-
46	Less Account 566 (Misc Trans Expense)	Line 56	-	DA	1.00000	-
47	A&G	323.197.b	0	W/S	1.00000	-
48	Less EPRI & Reg. Comm. Exp. & Other Ad.	(Note D & Attach 4)	-	DA	1.00000	-
49	Plus Transmission Related Reg. Comm. Exp.	(Note D & Attach 4)	-	TE	1.00000	-
50	PBOP expense adjustment	(Attachment 4)	-			-
51	Common	(Attachment 4)	-	CE	1.00000	-
52	Transmission Lease Payments	200.4.c	-	DA	1.00000	-
53	Account 566					
54	Amortization of Regulatory Asset	Attachment 4	-	DA	1.00000	-
55	Miscellaneous Transmission Expense	Attachment 4	-	DA	1.00000	-
56	Total Account 566		-			-
57	TOTAL O&M (sum lines 44, 47, 49, 50, 51, 52, 56 less lines 45, 46 & 48)		-			-
58	DEPRECIATION EXPENSE					
59	Transmission	336.7.b & c	-	TP	1.00000	-
60	General and Intangible	336.1.d&e + 336.10.b&c	-	W/S	1.00000	-
61	Common	336.11.b&c	-	CE	1.00000	-
62	Amortization of Abandoned Plant	(Attachment 4)	-	DA	1.00000	-
63	TOTAL DEPRECIATION (Sum lines 59-62)		-			-
64	TAXES OTHER THAN INCOME TAXES (Note E)					
65	LABOR RELATED					
66	Payroll	263i	-	W/S	1.00000	-
67	Highway and vehicle	263i	-	W/S	1.00000	-
68	PLANT RELATED					
69	Property	263i	-	GP	1.00000	-
70	Gross Receipts	263i	-	NA	0.00000	-
71	Other	263i	-	GP	1.00000	-
72	Payments in lieu of taxes		-	GP	1.00000	-
73	TOTAL OTHER TAXES (sum lines 66-72)		-			-
74	INCOME TAXES	(Note F)				
75	T=1 - {[(1 - SIT) * (1 - FIT)] / (1 - SIT * FIT * p)} =		0.00%			
76	CIT=(T/1-T) * (1-(WCLTD/R)) =		0.00%			
77	where WCLTD=(line 118) and R= (line 121)					
78	and FIT, SIT & p are as given in footnote F.					
79	1 / (1 - T) = (T from line 75)		0.0000			
80	Amortized Investment Tax Credit	(266.8f) (enter negative)	0			
81	Income Tax Calculation = line 76 * line 85		0	NA		-
82	ITC adjustment (line 79 * line 80)		0	NP	1.00000	-
83	Total Income Taxes	(line 81 plus line 82)	0			-
84	RETURN					
85	[Rate Base (line 42) * Rate of Return (line 121)]		0	NA		-
86	REV. REQUIREMENT (sum lines 57, 63, 73, 83, 85)		0			-

SUPPORTING CALCULATIONS AND NOTES

Attachment A

Formula Rate - Non-Levelized | Rate Formula Template

Utilizing FERC Form 1 Data

0

PATH West Virginia Transmission Company, LLC

General Note: References to pages in this formulary rate are indicated as: (page#, line#, col.#)

References to data from FERC Form 1 are indicated as: #.y.x (page, line, column)

Note Letter	
A	The balances in Accounts 190, 281, 282 and 283, as adjusted by any amounts in contra accounts identified as regulatory assets or liabilities related to FASB 106 or 109. Balance of Account 255 is reduced by prior flow throughs and excluded if the utility chose to utilize amortization of tax credits against taxable income as discussed in Note F. Account 281 is not allocated.
B	Identified in Form 1 as being only transmission related.
C	Cash Working Capital assigned to transmission is one-eighth of O&M allocated to transmission Prepayments are the electric related prepayments booked to Account No. 165 and reported on Pages 110-111 line 57 in the Form 1.
D	EPRI Annual Membership Dues listed in Form 1 at 353.f, all Regulatory Commission Expenses itemized at 351.h, except safety, education and out-reach related advertising included in Account 930.1. Regulatory Commission Expenses directly related to transmission service, ISO filings, or transmission siting itemized at 351.h.
E	Includes only FICA, unemployment, highway, property, gross receipts, and other assessments charged in the current year. Taxes related to income are excluded. Gross receipts taxes are not included in transmission revenue requirement in the Rate Formula Template, since they are recovered elsewhere.
F	The currently effective income tax rate, where FIT is the Federal income tax rate; SIT is the State income tax rate, and p = "the percentage of federal income tax deductible for state income taxes". If the utility is taxed in more than one state it must attach a work paper showing the name of each state and how the blended or composite SIT was developed. Furthermore, a utility that elected to utilize amortization of tax credits against taxable income, rather than book tax credits to Account No. 255 and reduce rate base, must reduce its income tax expense by the amount of the Amortized Investment Tax Credit (Form 1, 266.8.f) multiplied by (1/1-T) (page 4, line 79).

Inputs Required:			
	FIT =	0.00%	
	SIT=	0.00%	(State Income Tax Rate or Composite SIT from Attachment 4)
	p =	0.00%	(percent of federal income tax deductible for state purposes)

G	Removes dollar amount of transmission expenses included in the OATT ancillary services rates, if any.
H	Removes dollar amount of transmission plant included in the development of OATT ancillary services rates and generation step-up facilities, which are deemed to included in OATT ancillary services. For these purposes, generation step-up facilities are those facilities at a generator substation on which there is no through-flow when the generator is shut down.
I	Enter dollar amounts
J	The ROE consists of a base ROE of 10.40%, a 50 basis point adder for participation in PJM and a 150 basis point Incentive ROE adder. No change in ROE may be made absent a Section 205 or 206 filing with FERC and no filing to change the ROE may be made by a Settling Party or Non-Opposing Party (as defined in the Settlement Agreement filed on October 7, 2011 in Docket No. ER08-386-000, *et al.*) except in accordance with the provisions of Section3.2 of the Settlement Agreement. Subject to rehearing of the November 30, 2012 Hearing Order in Docket No. ER12-2708-000, the post abandonment ROE will be 10.9% beginning September 1, 2012 and 10.4% beginning December 1, 2012. The 2012 true-up will be computed using an ROE that is a time-weighted average of the pre-abandonment ROE (i.e., 12.4%) and the allowed post abandonment ROE. Example Calculation: For the first 244 days the authorized ROE will be 12.4%, for the next 91 days the ROE will be 10.9% , and for the remaining 31 days the ROE will be 10.4%. Therefore, the weighted ROE = (12.4% * 244 + 10.9% * 91 + 10.4%* 31)/366 = 11.858%. Beginning with 2013 and through the remainder of the amortization period, the ROE will be 10.4%.-
K	The percentage shown for Long Term Debt is subject to the Annual Update and Attachment 6 and Attachment 9.

5

Attachment 4 - Cost Support

PATH West Virginia Transmission Company, LLC

Safety Related Advertising, Education and Out Reach Cost Support

	Attachment A Line #s, Descriptions, Notes, Form 1 Page #s and Instructions		Form 1 Amount	Safety, Education, Siting & Outreach Related	Other	Details
	Directly Assigned A&G					
157	General Advertising Exp Account 930.1	p323.191.b	-	-	-	None

Multi-state Workpaper

	Attachment A Line #s, Descriptions, Notes, Form 1 Page #s and Instructions	State 1	State 2	State 3	State 4	State 5	Weighed Average
	Income Tax Rates						
			WV				
158	SIT=State Income Tax Rate or Composite		0.000%				0.00%

Excluded Plant Cost Support

		Attachment A Line #s, Descriptions, Notes, Form 1 Page #s and Instructions		Excluded Transmission Facilities	Description of the Facilities
	Adjustment to Remove Revenue Requirements Associated with Excluded Transmission Facilities				
159		Excluded Transmission Facilities		-	**General Description of the Facilities**
		Instructions:		**Enter $**	**None**
	1	Remove all investment below 69 kV facilities, including the investment allocated to distribution of a dual function substation, generator, interconnection and local and direct assigned facilities for which separate costs are charged and step-up generation substation included in transmission plant in service.		-	
	2	If unable to determine the investment below 69kV in a substation with investment of 69 kV and higher as well as below 69 kV,		**Or**	
		the following formula will be used:	**Example**	**Enter $**	
	A	Total investment in substation	1,000,000	-	
	B	Identifiable investment in Transmission (provide workpapers)	500,000	-	
	C	Identifiable investment in Distribution (provide workpapers)	400,000	-	
	D	Amount to be excluded (A x (C / (B + C)))	444,444	-	
					Add more lines if necessary