UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Rate Recovery, Reporting, and

Accounting Treatment of Industry Docket No. RM22–5

Association Dues and Certain Civic,

Political, and Related Expenses

**Comments of Public Citizen, Inc.**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Financial details of our operations are available at our website.[[1]](#footnote-1)

Federal law provides unique regulatory treatment of utilities in comparison to nearly all other companies in our economy, as Section 201 of the Federal Power Act commands “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest,”[[2]](#footnote-2) and the Natural Gas Act asserts that “the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest.”[[3]](#footnote-3) The Commission’s ultimate mandate, therefore, is to ensure that corporations under its jurisdiction are serving the public interest, and to protect consumers from unjust and unreasonable rates.[[4]](#footnote-4) Few, if any, other industries are tasked with similar public interest mandates from Congress. As such, Commission-jurisdictional utilities must play by different rules from other corporations.

The Commission currently relies upon utilities to make the initial determination as to whether expenses related to trade association dues are recoverable from consumers (classified under Account 930.2 in the Uniform System of Accounts), or nonrecoverable (reported in Account 426.4, expenditures for certain civic, political

and related activities). Challenges to the utility’s decision can only be made after the fact, through a Commission audit, a protest to a rate filing, or complaints filed under Section 206 of the Federal Power Act or Section 5 of the Natural Gas Act. The Commission’s deferral to utilities to establish what expenses are recoverable from consumers erects an onerous challenge for consumers concerned whether they are being fairly charged.

Given recent utility scandals involving improper rate recovery of lobbying and advocacy expenses, Public Citizen supports five reforms to the Commission’s reporting requirements for utilities’ expenditures on trade association dues and political expenses to ensure that consumers are protected from unjust and unreasonable rates.

**First, the Commission should require the default reporting of all trade association dues in Account 426.4, for nonrecoverable expenses.** Doing so will correctly shift the burden onto utilities to provide justification for requesting expenses in Account 930.2 for recoverable charges.

**Second, for any charges deemed recoverable, the Commission must require detailed public disclosure of all expenses in Account 930.2.** A cursory review of annual reports filed at the Commission by utilities finds haphazard reporting, with some utilities providing full disclosure of all such expenses, and others providing no detail whatsoever. The public interest requires full public disclosure of trade association dues and all other expenses charged to ratepayers.

**Third, the Commission should compel detailed disclosure of charges in Account 426.4 as well.** Since the 2010 U.S. Supreme Court decision *Citizens United v. FEC*, corporations can spend unlimited undisclosed amounts of money to influence elections and affect policy outcomes. This flood of money to influence policy must be accompanied by disclosure to allow the public to have information about which interests are financing public policy discourse.[[5]](#footnote-5) It is often impossible to gather a full picture of a corporation’s political activity due to the cumbersome nature of the disclosures and the different regimes used by each state.[[6]](#footnote-6)

Tracking corporate advocacy laundered through trade associations or not-for-profit organizations further obscures the public interest need for disclosure. An example of this cloaked advocacy involved FirstEnergy funneling $60 million to then-Ohio Speaker of the House, Larry Householder, through a not-for-profit organization in exchange for a bailout of the company’s power plants.[[7]](#footnote-7) A report last year found that corporations and their trade associations have poured hundreds of millions of dollars into not-for-profit tax-exempt 527 groups, like the Republican and Democratic governors associations, that have significantly shaped the political landscape at the state level.[[8]](#footnote-8) Indeed, a recent complaint filed by Public Citizen exposed the fact that PJM Interconnection LLC made hundreds of thousands of dollars in financial contributions to the Republican and Democratic governors associations and actively concealed those contributions from its own Finance Committee.

It is critical for regulators, the public, customers, and shareholders to understand how utilities engage in politics and policy making through their trade associations. Absent effective disclosure, utilities can mask their financial influence over the political process to boost their profits at the expense of ratepayers. Federal law designates electric and natural gas utilities as “affected with a public interest”, and this special status should convey detailed disclosure of political activity, regardless of whether it is recovered from ratepayers.

**Fourth, the Commission must necessitate enhanced financial disclosure by Regional Transmission Organizations (RTOs)**. RTOs provide essential public interest functions often without corresponding transparency or accountability, despite the fact that consumers pay for their entire administrative budget. For example, PJM Interconnection LLC bans the public and journalists from witnessing Finance Committee meetings where details of its $300 million a year in ratepayer-funded expenditures are deliberated. The lack of public access to RTO stakeholder proceedings, combined with their unique public interest role, necessitates enhanced levels of reporting disclosure. The Commission should require all RTOs to disburse monthly reports to the public detailing all lobbying and political activities, including details of lobbying meetings with public officials, based upon the October 19, 2006 order of the Commission (117 FERC ¶ 61,070) requiring ISO New England Inc. to post on its website a monthly report detailing all legislative-related meetings.[[9]](#footnote-9) Additional detail on RTO expenditures for bonuses paid to top executives (FERC Form 1 filings only capture the base salary paid to top RTO executives, which often constitutes a minor component of their full, ratepayer-funded compensation package), compensation paid to board of directors and financial sponsorship of conferences should be among the included enhancements.

**Finally, improved political expenditure disclosure must be accompanied by upgrades to the Commission’s website**, requiring an overhaul of the availability of the FERC annual reports by electric utilities (Form 1); natural gas companies (Form 2), and oil pipeline companies (Form 6). Members of the public seeking to access these reports endure a cumbersome process that begins at the Commission’s eLibrary webpage[[10]](#footnote-10), and under *Document Class*, the user must select dropdown arrows for Report/Form, then check off each relevant form (Form 1, Form 2, or Form 6). The public interest would be better served for the Commission to have a dedicated Annual Report page, with a simplified user interface to make searching for company annual reports much easier. For example, the Commission could feature a Utility Annual Report landing page, with just three search fields: a text box to enter the utility/company name; a dropdown list of Annual Reports (Form 1 Electric, Form 2 Gas, Form 6 Oil); and a dropdown list of Annual Report Year. In addition, the forms themselves could use readability improvements—Public Citizen staff can't be the only ones who find navigating the forms complicated and burdensome.

Respectfully submitted,

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1. www.citizen.org/about/annual-report/ [↑](#footnote-ref-1)
2. 16 USC § 824. [↑](#footnote-ref-2)
3. 15 USC § 717(a). [↑](#footnote-ref-3)
4. 16 USC § 824d(a). [↑](#footnote-ref-4)
5. https://corporatereformcoalition.org/policy-solutions [↑](#footnote-ref-5)
6. www.reuters.com/article/us-wal-mart-stores-disclosure-lobbying-e/exclusive-wal-mart-improves-lobbying-disclosure-after-stockholder-push-idUSKBN0NY0AH20150513 [↑](#footnote-ref-6)
7. www.npr.org/2021/07/23/1019567905/an-energy-company-behind-a-major-bribery-scandal-in-ohio-will-pay-a-230-million- [↑](#footnote-ref-7)
8. www.politicalaccountability.net/wp-content/uploads/2021/08/Conflicted-Consequences.pdf [↑](#footnote-ref-8)
9. Examples are found at *www.iso-ne.com/library/latest-published* and include External Affairs Monthly Issues Memo; Government Affairs Meeting Reports; Government Affairs Report Summaries; Government Affairs Presentations; and Government Affairs Correspondence. [↑](#footnote-ref-9)
10. https://elibrary.ferc.gov/eLibrary/search [↑](#footnote-ref-10)