

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Public Citizen, Inc.

v.

Docket No. EL18-61

PJM Interconnection LLC

**Additional Comments of Public Citizen, Inc. And Other Public Interest Organizations**

Public Citizen and other public interest organizations submit these additional comments to supplement Public Citizen's original complaint against PJM Interconnection LLC filed on February 20. Our complaint featured evidence that PJM had made nearly \$460,000 in contributions to two political organizations, the Democratic Governors Association and the Republican Governors Association, and that those political expenditures, together with the absence of detailed disclosure by PJM of its broader external affairs and lobbying expenditures raise justness and reasonableness concerns.

Other non-affiliated organizations representing consumers in PJM's footprint join Public Citizen in making these additional comments.

The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) is a non-profit, unincorporated membership organization located in Pennsylvania. CAUSE-PA advocates on behalf of its members for affordable utility service by regulated and non-regulated utilities in the Commonwealth of Pennsylvania and is a frequent participant in proceedings before the Pennsylvania Public Utility Commission. CAUSE-PA also advocates for weatherization and energy efficiency measures that will assist low-income Pennsylvanians reduce their bills by reducing their energy consumption. CAUSE-PA membership is open to low-income individuals residing in the Commonwealth of Pennsylvania and others (including organizations) who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being. The organization strives to ensure that a majority of its members are low-income individuals whose household income does not exceed 150% of the federal poverty guidelines.

## Summary of Publicly Available Evidence

- PJM admits in its Answer that the nearly \$460,000 in contributions to two political organizations were financed by filed rate revenues, but defends the payments as “membership fees” that “were not intended to support any political campaign.” PJM’s Answer states that these political organization contributions are part of its “external affairs and communications” programs and its broader external affairs and lobbying strategy.
- Both recipients of PJM’s contributions are political organizations with the purpose to use contributions to finance partisan gubernatorial political races. Both report PJM’s payments as contributions to their political organization rather than any educational or other nonpartisan unit or purpose.
- Leaked documents for one political organization, the Republican Governors Association, describe the solicitation for a \$25,000 level “membership” as supporting the “Republican agenda,” says the benefits include access to Republican governors, calls the payments “contributions,” and says foreign nationals are prohibited from making them. Federal law prohibits foreign nationals from making contributions or expenditures to influence state and federal elections, but does not prohibit them from paying fees to attend educational events or policy discussions.
- While the payments are not illegal from the standpoint of campaign finance law, FERC long ago said that it is unjust and unreasonable to include money for political contributions in regulated rates, and PJM admits that this money came from its rates.
- Public Citizen’s February 20 complaint raised concerns not just about the justness and reasonableness of the political organization expenditures, but of PJM’s broader lobbying expenditures, particularly because PJM fails to report any detail of its external affairs and lobbying expenditures to its internal Finance Committee or to FERC.
- Given the new evidence that PJM unjustly and unreasonably used filed rate revenues to finance contributions to two political organizations as part of PJM’s broader external affairs and lobbying strategy, and PJM’s lack of adequate disclosure to determine whether other external affairs and lobbying expenditures are just and reasonable, FERC should:
  - open an investigation under Section 206 of the Federal Power Act concerning the justness and reasonableness of PJM’s external affairs and lobbying expenses;
  - establish a refund effective date;
  - hold a hearing.

## PJM Confirms Use of Filed Rate Money for Political Contributions as Part of Lobbying Advocacy

The same day Public Citizen filed its complaint, PJM released a statement addressing these contributions:

*The payments to the two Governors’ Associations were annual business counsel membership fees that allow PJM to provide input and participate in policy summits on energy industry topics that could impact PJM’s members. Those payments were not intended to support any political campaign. PJM’s external affairs and communications*

*costs, including these memberships, are collected through PJM's filed stated rates consistent with FERC's order authorizing these costs to be collected from ISO-RTO members. PJM operates as a profit neutral organization for which educating and informing are essential to our FERC-defined functions.*<sup>1</sup>

PJM subsequently filed an Answer to Public Citizen's complaint taking these same positions: that the contributions are actually "membership fees" [Answer, at Page 5]; that PJM's purpose to make contributions to the DGA and RGA "is to keep informed on policy initiatives ... and...to share relevant details about such matters with state policy makers" [Answer, at Page 5]; and "the expenses identified in the Complaint are for recoverable lobbying, educational activities and monitoring and communicating on issues related to PJM's core function or mission, or advocacy on matters in the collective best interest of PJM and its members." [Answer, at Page 2].

PJM's claim that its nearly \$460,000 in contributions to political organizations were simply "membership fees" to "allow PJM to provide input and participate in policy summits" and "were not intended to support any political campaign" is not credible. Both Governors' Associations are political organizations under section 527 of the Internal Revenue Code, meaning that they are operated primarily for the purposes of accepting contributions and making expenditures to influence elections. 26 U.S.C. § 527(e)(1) & (2). Their websites confirm their pervasively partisan orientation and commitment to electing governors of their respective parties. See <https://democraticgovernors.org/> ("Chaired by Gov. Jay Inslee, the DGA is dedicated to electing Democratic governors across the country."); <https://www.rga.org/> ("The RGA helps elect Republicans to governorships throughout the nation.") Although they are not "political committees" under the Federal Election Campaign Act, 52 U.S.C. § 30101 et seq., that is because they are not active in elections for federal offices, not because they are not engaged primarily in partisan electoral politics. Contributions to these organizations go directly to support their political war chests.

While both the Democratic and Republican Governors' Associations keep nearly all details about their membership options secret, a recent disclosure of archived Republican Governors Associations documents reveal particulars about the literature that accompanies

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<sup>1</sup> Sam Mintz, "Watchdog questions source of PJM's political donations," *E&E News*, February 20, 2018.

membership applications.<sup>2</sup> Exhibit A is a two page example of a *Governors Council Membership* form of the Republican Governors Association from 2008. Corresponding to PJM’s claim that it paid each of the two associations approximately \$25,000 annually in “membership fees,” the Republican Governors Council Membership costs \$25,000, and the contribution form describes what a contributor gets for the \$25,000 in “membership dues”: “The Governors Council offers members the ability to bring their particular expertise to the political process while helping to support the Republican agenda.” It states that council members work in “an advisory capacity with the Republican Governors,” may attend Governors Forums, and enjoy access to governors and their staffs.

That is a description of gaining influence in exchange for a political contribution, rather than of paying a fee for educational services or to participate in a neutral policy forum.

The Governors Council Membership form in Exhibit A continues to state that membership dues are payable to the RGA (i.e., the 527 political organization) and not to any 501(c) charitable or educational organization. It says nothing to suggest that funds will be passed on to a 501(c) organization. It says that contributions are not deductible as a charitable expense, that there is no *federal* limit on contributions and that contributions will not be used in connection with a *federal* election—all of which is consistent with the RGA’s mission of influencing state-level elections.

Furthermore, the Governors Council Membership form clearly states: “Contributions from foreign nationals are prohibited.” This line should have raised red flags for any attorney reviewing PJM’s use of filed rate money for these “membership dues.” The only reason why the RGA would prohibit foreign nationals from paying such “membership dues” is that foreign nationals are barred by federal law from giving money to influence state as well as federal elections.<sup>3</sup> By contrast, foreign nationals may freely contribute to 501(c) organizations that don’t engage in electioneering.

As noted in Appendix A to Public Citizen’s original February 20 complaint, both the RGA and DGA reported every PJM contribution as a donation to a political organization, and not to any educational arm of the organizations.

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<sup>2</sup> [www.citizensforethics.org/the-documents-the-republican-governors-association-doesnt-want-you-to-see/](http://www.citizensforethics.org/the-documents-the-republican-governors-association-doesnt-want-you-to-see/)

<sup>3</sup> 52 U.S.C. § 30121; 11 C.F.R. § 110.20

As can be seen in Exhibit B, Dominion Energy is another public utility that, unlike PJM, classifies its contributions to the Republican Governors Association and Democratic Governors Associations as part of its political contributions, and therefore does not use filed rate money for such expenses. In Exhibit B, one can see how Dominion Energy very clearly separates political expenditures—such as its contributions to both the RGA and DGA—from its lobbying expenditures, which can be recoverable in part. In contrast, PJM classifies its RGA and DGA contributions as one and same with its lobbying expenditures.

PJM’s March 9 Answer to Public Citizen’s complaint erroneously claims that “[t]here is nothing new alleged in the Complaint.” [at Page 2]. To the contrary, our complaint contains brand-new evidence of hundreds of thousands of dollars in contributions to two political organizations using filed rate money, and PJM has newly-acknowledged that these contributions are part of its previously-undisclosed external affairs and lobbying strategy.

**PJM’s Nondisclosure Of Important Details of Its External Affairs and Lobbying Expenditures from Its Internal Finance Committee and from FERC Requires an Investigation and Hearing to Determine Whether the Expenditures are Just and Reasonable**

Public Citizen and other Public Interest Advocates do not limit our concerns about the justness and reasonableness of PJM’s annual contributions to political organizations. While using regulated rates for partisan political purposes is unjust and unreasonable under the Federal Power Act, such payments are but one part of PJM’s external affairs and lobbying activities, which PJM has not adequately disclosed to its Finance Committee or to FERC.

PJM’s February 20 media statement defends these political contributions by describing them as part of PJM’s broader external affairs and lobbying expenditures:

*The payments to the two Governors’ Associations were annual business counsel membership fees that allow PJM to provide input and participate in policy summits on energy industry topics .... PJM’s external affairs and communications costs, including these memberships, are collected through PJM’s filed stated rates....*

Public Citizen’s February 20 complaint identified numerous other lobbying expenditures that PJM fails to disclose to its Finance Committee or to FERC. This lack of disclosure, combined with PAC expenditures that we have already identified as being clearly unjust and

unreasonable, requires a broader Commission investigation to determine whether PJM's external affairs and lobbying expenditures are consistent with just and reasonable rates.

PJM defends its lack of disclosure of details about its external affairs and lobbying expenditures by referencing a 2009 FERC audit of PJM's expenses. [PJM Answer, at Page 9]. This FERC audit covered the period January 2007 through February 2009—a period of time when PJM's political organization expenditures were in their infancy, and did not include any payments to the RGA, since those did not commence until 2010.

Voting members of the PJM Finance Committee are volunteers. While it may be appropriate to rely on volunteers to oversee the finances of a PTA bake sale, PJM's dependence on such volunteer stakeholders to independently review the expenses of a nearly \$300 million organization is not effective. In off-the-record interviews with these volunteer stakeholders, Public Citizen was informed that Finance Committee members were not provided enough time or resources to independently review PJM's finances.

Finally, PJM asks the Commission to reject Public Citizen's claims that PJM does not provide public interest groups with the right to vote in its stakeholder process. But the Commission recently ordered that “[i]f Public Citizen wishes to challenge PJM's membership rules or the voting rights granted to PJM members, it may do so by filing a complaint under section 206 of the Federal Power Act.” [Docket No. ER17-249-001, Order Denying Rehearing, at Paragraph 5, Issued November 16, 2017]. We are raising this issue, as FERC directed, in a complaint under section 206 of the Federal Power Act.

## **Conclusion**

The appropriate course of action is for the Commission to order an investigation under Section 206 of the Federal Power Act; set an effective refund date, and initiate a hearing to determine the justness and reasonableness of PJM's external affairs and lobbying expenditures, and the lack of voting rights for public interest organizations in PJM's stakeholder process.

Respectfully Submitted,

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## **EXHIBIT A**



# RGGA

REPUBLICAN GOVERNORS ASSOCIATION

## **GOVERNORS COUNCIL MEMBERSHIP**

***\$25,000 Annual Contribution or \$50,000 Annual Raise***  
*(as of 2/1/08)*

The Governors Council offers members the ability to bring their particular expertise to the political process while helping to support the Republican agenda. This group shares a unique relationship with the Republican Governors, beginning with the premise that the strength of America flows from the people to the government, not from the government to the people. Council members work in an advisory capacity with the Republican Governors on current issues and initiatives that directly impact American businesses, families and government. The objective is to work together and recommend “real life” solutions to underachieving and failed policies in the areas of lower taxes, education, crime, health care and environmental issues. This is accomplished through the RGA Governors Forums scheduled in 2007. They will give Council members an opportunity to meet informally with Republican Governors and their key staff members to lend their experience on state and national issues.

## **BENEFITS OF COUNCIL MEMBERSHIP**

### **“A CELEBRATION OF AMERICA’S LEADERS” GALA**

The RGA Gala is our biggest fundraising event of the year. Last year it brought in more than \$10 million. This year we expect it to be even better. The event is attended by the President, our Governors, and our members. It is one of Washington’s biggest annual political events and should not be missed. The 2008 Gala is scheduled for Monday, February 25, 2008. For your convenience, the Gala is scheduled to coincide with the National Governors Association (NGA) Winter Meeting. Council members receive Four (4) tickets to this event –

### **GOVERNORS FORUMS SERIES**

The Governors Forums are some of the most important events that RGA hosts. They started in 1995 as the focal point of membership in the RGA. At these regional events a group of 5-8 governors discuss the best policy practices from around the country on a particular topic. RGA members in attendance are encouraged to participate in the discussions and our Governors have greatly appreciated their questions and insights. The Forums offer a unique opportunity to exchange ideas and concepts with our Governors that are of foremost interest to the RGA membership. Forums last year took our members everywhere from dinner on the deck of the USS Missouri in Hawaii talking about Homeland Security to a lunch at Georgia’s Aquarium discussing Economic Development. Attendees at the events have included Governors, CEOs, industry leaders, and other experts. Council members are invited to send up to two (2) attendees to the Forums. *The 2008 Forum series will be held in Texas, Georgia and Nevada.*

### **D.C. DISCUSSION BREAKFAST SERIES**

Council Members are invited to send two (2) representatives to all D.C. Discussion Breakfasts. Each breakfast features a special invited speaker of interest from our Governors’ policy and political staff members. These breakfasts enable members to have informal conversations with Republican Governors’ Washington, D.C. State Office Directors and other senior staff. The events always feature free-ranging discussion and important insights into the latest political happenings.

### **ACCESS TO THE RGA’S “REPUBLICAN NATIONAL CONVENTION WEEK EXPERIENCE” PACKAGES**

The 2008 Republican National Convention is scheduled for Sunday, August 31 – Thursday, September 4, 2008 in St. Paul, Minnesota. The RGA will be offering packages and sponsorship opportunities for our “Republican National Convention Week Experience” activities. Please note that participation with the RGA’s Convention packages and sponsorships will be separate from annual membership dues. Please contact the RGA Finance team at (202) 662-4920 for an updated schedule of events during Convention week and Convention benefits information.

### **SUMMER RECEPTION AT NGA**

The RGA hosts an annual event in conjunction with the National Governors Association (NGA) Summer Meeting which features many of our Republican Governors. Council members are invited to send up to two (2) attendees to the event. *The 2008 summer reception is scheduled for Sunday, July 13, 2008 in Philadelphia, Pennsylvania.*

### **DISCOUNTED EVENT SPONSORSHIP**

Sponsoring an RGA event brings special recognition and benefits. Packages vary at each Forum, but typically include a host reception, event recognition, and more. As a Council you will receive a 15 percent discount on sponsorship opportunities, unless otherwise noted. Contact our Finance team to learn more.

### **ROUNDTABLE POLICY PARTICIPATION**

At our Governors Forums and the RGA Annual Conference, Roundtable Participants will join 5-8 governors in discussing issues of particular interest to the Roundtable guests. These gatherings are a unique opportunity to exchange ideas and concepts with our Governors. Council members will receive a 15 percent discount on Roundtable Participation sponsorships, unless otherwise noted.

### **2008 RGA ANNUAL CONFERENCE**

The Annual Conference is RGA's premier event for the year. It is attended by almost every Republican Governor and their staff. The 2008 RGA Annual Conference is scheduled for November 12 – 14 at the Fontainebleau, Miami Beach, Florida. This three-day event provides Council members with direct interaction with Republican Governors, Chiefs of Staff and other key staff from the state offices. Council members will have the opportunity to attend the business plenary sessions where Republican Governors exchange policy ideas and accomplishments. In addition, the social schedule includes the RGA State Dinner, various breakfasts, receptions and optional activities where Council members can meet and talk informally with Republican Governors, their staff or other Conference attendees. Council members are invited to send up to two (2) attendees to the Annual Conference.

### **RGA COMMUNICATIONS CLIPS AND BLOG**

As a Council member, your online profile will also give you access to exclusive blogs from our Governors and their staff and allow you to read in-depth analyses of innovative policies that Republican Governors are implementing. You will also receive the daily news clips which will keep you up to date on all the news affecting our states and elections.

### **RGA DIRECTORY**

As a Council member, you will receive the RGA Directory which will be your guide to all of our Governors' offices. You will have handy contact information for Chiefs of Staff, DC Directors, Schedulers, and Policy Advisors. It also includes additional information about RGA including contact information.

### **THE EXECUTIVE QUARTERLY NEWSLETTER**

The Quarterly Newsletter will keep you up to speed on the latest RGA events and election and policy news. Every quarter you'll get an inside look at important races and learn what RGA is doing to help our candidates win. In addition, you will learn about some of the innovative policies that our Governors are developing and how they are improving their states. Lastly, the RGA Chairman will include a special message on RGA's latest plans and strategy.

### **MYRGA.COM ACCESS**

Your membership will give you special access to a new section of RGA's website: MyRGA. MyRGA utilizes the latest technology, to keep you informed of everything happening at RGA and give you access to exclusive content. This members only section of our website allows members to pro-actively review and upgrade your membership benefits and account, change your contact information, donate to RGA, and register for events. The secure website will be your one-stop shop for all things RGA-related and will allow you to really put your membership to use.

## **MEMBERSHIP GUIDELINES**

RGA Governors Council **membership dues require a \$25,000 contribution to be made payable to the RGA** or a commitment to raise a total of \$50,000 in a calendar year for annual membership. Membership runs on a 12-month cycle from date of receipt of initial contribution. Questions regarding RGA Council membership or events may be directed to Angela Meyers in the RGA offices at (202) 662-4141 or [ameyers@rga.org](mailto:ameyers@rga.org).

**Contributions or gifts to the RGA are not deductible as charitable contributions for federal income tax purposes.** There is no federal statutory limit on the amount a corporation, individual or PAC may contribute to the RGA. Contributions will not be used in connection with any federal election. **Contributions from foreign nationals are prohibited.**

## **EXHIBIT B**



## 2016 Political Contributions and Lobbying Expenses

### 2016 Corporate Political Contributions to 527 Organizations

Name of Recipient	Amount
Democratic Governors Association	\$60,000
Democratic Attorneys General Association	\$15,000
Democratic Legislative Campaign Committee	\$25,000
Republican Governor Association	\$50,000
Republican Attorneys General Association	\$15,000
Republican State Leadership Committee	\$35,000
GOPAC	\$25,000

### Lobbying Portion of 2016 Trade Association Dues and Payments

Name of Recipient <sup>(1)</sup>	Lobbying Portion of Dues/Payments <sup>(2)</sup>
American Gas Association	\$24,476
Center for Liquefied Natural Gas	\$7,800
Edison Electric Institute	\$250,222
Greater Akron Chamber of Commerce	\$2,500
Interstate Natural Gas Association of America	\$77,450
National Association of Manufacturers	\$28,150
New England Power Generators Association	\$15,000
Nuclear Energy Institute	\$86,328
Marcellus Shale Coalition	\$15,300
U.S. Chamber of Commerce	\$75,000
Virginia Chamber of Commerce	\$8,250

Dominion Energy did not make any independent political expenditures in support of or in opposition to a candidate or political party. In addition, Dominion Energy does not make payments to influence the outcome of ballot measures.

<sup>(1)</sup> Includes trade associations (i) to which Dominion Energy made payments greater than \$50,000 for 2016 dues and (ii) which notified Dominion Energy of the portion used by that organization for expenditures or contributions that if made directly by Dominion Energy would not be deductible under section 162(e) of the Internal Revenue Code.

<sup>(2)</sup> Reported amount represents the estimated portion of Dominion Energy's dues or payment that if made directly by Dominion Energy would not be deductible under section 162(e) of the Internal Revenue Code and is based upon information requested and received by Dominion Energy. Reported amounts for which the trade association directly pays tax on the portion that is not deductible under section 162(e) of the Internal Revenue Code.