

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

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

**COMMENTS OF THE OFFICE OF THE NEVADA ATTORNEY GENERAL,  
BUREAU OF CONSUMER PROTECTION**

The Office of the Nevada Attorney General, Bureau of Consumer Protection (“BCP”) hereby submits comments in response to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Notice of Inquiry (“NOI”) issued on December 16, 2021.<sup>1</sup> The BCP supports FERC’s NOI to examine rate recovery, reporting and accounting treatment of industry association dues and certain civic, political and related expenses, as well as whether additional transparency is needed with respect to defining donations for charitable, social or community welfare purposes.

**I. DESCRIPTION OF COMMENTOR**

The BCP operates within the Nevada Attorney General’s Office pursuant to NEV. REV. STAT. § 228.310 and represents the interests of Nevada utility consumers before FERC pursuant to NEV. REV. STAT. § 228.360. As the state-designated agency charged with protecting the interests of Nevada’s electric and natural gas ratepayers, the BCP is interested in ensuring that utility costs that are recovered from ratepayers are squarely within the interest of providing service to customers. The dues collected by Nevada’s electric and natural gas customers to cover trade association membership affect the rates passed through to Nevada utility ratepayers for natural gas and electric service. Naturally, BCP is further interested in increasing the transparency of industry

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<sup>1</sup> Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses, 177 FERC ¶ 61,180, Fed. Reg. Vol. 86, No. 244, 72958 [hereinafter *NOI*].

association costs. Accordingly, the BCP represents consumer interests which may be directly affected by this NOI.

## II. COMMUNICATIONS

BCP requests that all correspondence or communications regarding this proceeding be addressed to the following individuals:

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## III. BACKGROUND

On March 17, 2021, the Center for Biological Diversity (“CBD”), pursuant to 18 C.F.R. § 385.207 and the Administrative Procedure Act, 5 U.S.C. § 553, petitioned the Commission to amend the Uniform System of Accounts (“USofA”) requirements for payments to industry associations engaged in lobbying or other influence-related activities.

In its Petition, CBD describes the role and purpose of the USofA. According to the Petition, fees and dues for membership in utility trade associations are recovered in Account 930.2, where there is a presumption of recovery for costs included in that Account.<sup>2</sup> Instead, CBD proposes that

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<sup>2</sup> Petition For Rulemaking To Amend The Uniform System of Accounts’ Treatment of Industry Dues, Docket No. Docket No. RM21-15-000, filed Mar. 17, 2021, at 2 (F.E.R.C.) [hereinafter *Petition*].

trade association dues should be recovered in Account 426, where costs in that Account are presumed unrecoverable.<sup>3</sup> CBD argues that, under *Janus*,<sup>4</sup> allowing the recovery of trade association dues is the equivalent of forced speech as trade associations, which utilities fund, engage in political activities that ratepayers should not be forced to fund.<sup>5</sup>

On December 16, 2021, FERC issued an NOI in the instant proceeding to further discuss issues raised in the CBD petition and seek comments from parties on the accounting treatment of trade association dues and to increase the transparency of how those dues are collected and presented. In particular, FERC seeks to “(i) [e]xamine 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; and (ii) identify 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.”<sup>6</sup> To support this examination, FERC seeks responses to 22 questions related to how trade associations classify, record, and recover industry association costs, the nature of costs incurred, and dues assigned by industry associations; how much transparency for such costs exists and potential ways to improve this transparency; and to inform whether modifications to Commission regulations or additional guidance are needed to ensure the proper classification of utility and industry association costs.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Janus v. Am. Fed’n of State, County, & Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018).

<sup>5</sup> *Petition* at 26.

<sup>6</sup> *NOI* at 10.

<sup>7</sup> *Id.* at 13-22.

#### IV. COMMENTS

##### A. BCP Supports the NOI

In its NOI, FERC describes the accounting treatment of trade association dues as those recoverable through rates and those unrecoverable through rates as defined by the USofA. Costs associated with “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, is considered below the line (*i.e.*, generally excluded from rate recovery).”<sup>8</sup> Other costs associated with the operation of the utility and not covered elsewhere in the USofA, including trade association membership dues, are considered recoverable.<sup>9</sup>

The Public Utilities Commission of Nevada (“PUCN”), through NEV. ADMIN. CODE §§ 704.640 and 704.650, has adopted the USofA for natural gas companies and electric power companies. NEV. REV. STAT. § 703.191 mandates that each public utility regulated by the PUCN file annual reports to the PUCN and each affected governmental entity. For all natural gas companies and electric power companies in Nevada, these reports are based on the accounting principles outlined in the USofA. As such, the USofA plays an integral role in the regulation of Nevada natural gas and electric utilities both in how the information is presented to the PUCN and how it is presented to other governmental entities. By virtue of including trade association costs and dues in Account 930.2 where those costs are presumed recoverable, the burden shifts from the utility companies to other groups, including the BCP, to argue against including these costs in rates. Instead, BCP agrees that trade association costs should be included in an account – Account 426 – where the utility has to justify inclusion of these costs rather than the other way around.

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

Consumer advocates like the BCP do not have the same level of resources available to them as private companies like utilities. By treating trade association costs as presumed non-recoverable, customers are prevented from being required to pay for costs and dues that act against the interests of the customers.

In a recent Nevada rate case, Nevada Power Company d/b/a/ NV Energy (“Nevada Power”) identified over \$340,000 in recoverable costs due to memberships associated with Edison Electric Institute (“EEI”).<sup>10</sup> EEI identified a percentage of those dues were for influencing legislation, and that amount was removed from Nevada Power’s cost recovery. Even though Nevada Power reduced the total amount sought for rate recovery by the percentage identified by EEI, that reduction only applies to influencing legislation. As the original CBD Petition details, groups like EEI engage in activities beyond lobbying and influencing legislation.<sup>11</sup> Furthermore, it is the utility’s duty to justify these expenses, not for the BCP to argue against recovery of these costs.

Account 930.2 allows for recovery of “the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.”<sup>12</sup> This includes “Industry association dues for company memberships.”<sup>13</sup> However, Account 426.4 covers influencing public opinion and public officials, and is not presumed recoverable.<sup>14</sup> The BCP supports FERC’s effort in this proceeding to provide additional clarity and transparency to what should be recoverable and what should not. BCP is concerned that that the services offered by trade associations like EEI are more than mere membership dues. Efforts by groups like EEI go beyond the expectations in Account 930.2 and better fit the description of Account 426.4. Even

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<sup>10</sup> *In the Matter of the Application of Nevada Power Company, d/b/a/ NV Energy, filed pursuant to NRS 704.110(3) and (4), addressing its annual revenue requirement for general rates charged to all classes and customers, Docket No. 20-06003, Volume 19 of 25, filed June 1, 2020, 86-92 (Nev. P.U.C.).*

<sup>11</sup> *Petition* at 12-14.

<sup>12</sup> 18 C.F.R. § 101 (2011).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

though groups like EEI have identified a portion of their costs influence public officials, groups like EEI provide their members with more information and strategy than “influencing,” and provide support and tactics for their members to act against the wishes of states and customers. The BCP believes that costs for trade associations, like EEI, should no longer be recoverable if the utility is unable to clearly demonstrate in a rate proceeding that the costs provide a benefit to the ratepayers of the utility rather than just the utility itself.

### **B. Response to FERC Questions**

In the NOI, FERC asked for stakeholder responses to 22 questions. The first five questions are directed to utilities and industry associations. BCP offers our responses to the remaining 17 FERC questions.

#### **Q6) What mechanisms currently exist for stakeholders to examine the costs and activities of industry associations?**

There are no mechanisms that currently exist for stakeholders to examine the costs and activities of industry associations. This fact was highlighted in testimony provided by the Regulatory Operations Staff (“Nevada Staff”) of the PUCN in Southwest Gas Corporation’s 2021 general rate case, Docket No. 21-09001.<sup>15</sup> In its testimony, Nevada Staff states the following:

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<sup>15</sup> See *In the Matter of the Application of Southwest Gas Corporation for Authority to Increase its Retail Natural Gas Utility Service Rates in its Southern and Northern Nevada Rate Jurisdictions*, Docket 21-09001, Direct Testimony of Jason A. Martin, filed January 14, 2022, 7 (Nev. P.U.C.) [hereinafter *Martin Testimony*]. The link to the entire testimony is: [https://pucweb1.state.nv.us/PDF/AxImages/DOCKETS\\_2020\\_THRU\\_PRESENT/2021-9/15275.pdf](https://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2020_THRU_PRESENT/2021-9/15275.pdf). For the record, PUCN Docket No. 21-09001 was resolved by a stipulated agreement filed on February 7, 2022, with a “Black Box” revenue requirement and therefore the PUCN did not rule on Nevada Staff’s testimony.

11 **II. American Gas Association (“AGA”) Dues.**

12 **16. Q. Please explain Staff’s recommendations regarding the AGA dues.**

13 A. In Statement I of the Application in the instant docket, SWG has provided an  
14 adjustment to the revenue requirement to remove 3.8 percent of the membership dues  
15 it paid to the AGA during the test-year.<sup>6</sup> SWG did not prove that the remaining 96.2  
16 percent is just and reasonable for inclusion in the revenue requirement and recoverable  
17 through rates. As I will explain further, one of the most troubling aspects of this  
18 arrangement is that neither Staff nor other interveners, not to mention SWG itself, are  
19 allowed to have any access to the underlying costs or data that supports the percentage  
20 calculations. The percentages obtained from the AGA by SWG cannot be corroborated  
21 or otherwise verified by any party to this proceeding.

**Q7) Do industry associations disclose the nature of their costs and activities in any state regulatory proceedings? If yes, please provide citations.**

BCP is not aware of any industry associations disclosing the nature of their costs and activities in a Nevada general rate case.

**Q8) Have any industry associations been the subject of audits by any regulatory bodies? If yes, please provide a summary of the purpose and findings of the audit(s).**

BCP is not aware of any industry associations being the subject of an audit by the PUCN or its predecessor, the Public Service Commission of Nevada.

**Q9) What, if any, additional transparency is needed for stakeholders to evaluate the reasonableness of industry association costs that are recovered through rates?**

As highlighted by Nevada Staff’s testimony in PUCN Docket No. 21-09001, there is no transparency of industry association costs. BCP believes that Question 5 of this NOI is a good start to providing some transparency to industry association costs.

**Q10) If additional transparency is needed for stakeholders, should any transparency requirements for industry association costs be limited to certain rates, such as electric transmission and natural gas transportation rates, in light of the potentially larger costs involved, or should they apply**

**to all types of rates (e.g., power sales agreements, reactive power, and sale of electricity)?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

**Q11) Specific to the electric industry, should any transparency requirements for industry association costs be limited to investor-owned utilities or should they also apply to municipal utilities and rural electric cooperatives who recover costs for Commission-jurisdictional service?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

**Q12) Industry associations rely on certain cost categories to enable utilities to determine what portion of their industry association dues are properly recovered from ratepayers and what costs are borne by shareholders. Please describe any additional or alternative cost categories to those in Question 5, above, that industry associations or their members should disclose to provide sufficient transparency.**

BCP believes that the costs categories identified by FERC in Question 5 of the NOI provide a good starting point. However, BCP may support the inclusion of additional cost categories in reply comments to be filed on March 23, 2022, after reviewing the comments of other interested commenters.

**Q13) What specific methods to enhance transparency of industry association costs should the Commission consider? For each of the following methods to enhance transparency, as well as others you may identify, please explain whether and how much would they (a) improve transparency; (b) impose burdens on industry associations and/or their members; (c) help ensure that utility rates are just and reasonable:**

- (a) utilities that seek to recover dues must possess detailed data that sufficiently explains such costs within their books and records, and such amounts must be subject to Commission audits, similar to that requested in Question 5, above;**
- (b) limit a utility's ability to seek and obtain recovery of industry association dues to industry associations that publicly disclose detailed cost data, similar to that requested in Question 5, above; and/or**



- (c) **utilities must include in their FPA section 205 stated rate filings and their supporting workpapers to their formula rate annual updates, information similar to that requested in Question 5, above?**

BCP believes that all options would improve transparency and help ensure that rates are just and reasonable. However, BCP believes that Option (B) would be the least burdensome on industry associations and their members because it would allow the industry associations to provide the detailed cost data in one location – presumably the industry associations’ websites – without having to provide the detailed cost data to each member.

- Q14) If the Commission imposed a requirement, such as one of those discussed in Question 13, above, should that requirement be limited to associations whose dues per utility exceed a certain minimum monetary threshold and, if so, what threshold?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

- Q15) What, if any, additional transparency is needed for stakeholders to evaluate whether donations for charitable, social, or community welfare purposes are treated appropriately for ratemaking purposes?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

- Q16) Do utilities currently base the amount of their costs recoverable through rates on (i) the USofA, specifically the definitions in Accounts 930.2 and 426.4, (ii) the Internal Revenue Service (IRS) definition of lobbying, (iii) some other basis, or (iv) some combination thereof? What percentage of dues would be considered recoverable for each the four options for the most recent fiscal year?**

According to the Nevada Staff’s testimony in Docket No. 21-09001, the American Gas Association uses the IRS definition of lobbying.<sup>16</sup> BCP does not know what percentage of dues would be considered recoverable under the four options offered in the question above.

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<sup>16</sup> See *Martin Testimony* at 8.

16	In response to discovery in Staff DR
17	154 SWG reported that when quantifying the 3.8 percent of dues used for “lobbying”,
18	the AGA used the Internal Revenue Service’s (“IRS”) definition of lobbying.

**Q17) What material differences, if any, are there between industry association costs considered nonoperating per the definition of Account 426.4 and industry association costs that may be deducted for tax purposes based on the Internal Revenue Code or IRS regulations? What are examples of such activities and expenditures?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

**Q18) For what, if any, industry association costs is the classification as operating or nonoperating through utility rates unclear and ambiguous? Please describe any such “gray areas.”**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

**Q19) The Commission currently allows all costs related to regulatory interventions and litigation by both utilities and industry associations to be recorded to above the line accounts. Further, Account 426.4 provides as an exception to the political advocacy activities utilities are required to report in that below the line account, namely, “expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility’s existing or proposed operations.” What is the appropriate scope of this exemption for utilities and, by extension, their industry associations? Are there types of appearances before regulatory or governmental bodies for which the related expenditures should be excluded from rates, and if so, on what basis?**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

**Q20) Please provide examples as to what, if any, costs for**  
**(a) information campaigns carried out by industry associations are currently recoverable in utility member rates;**  
**(b) information campaigns carried out by industry associations are currently recoverable in rates that the Commission should exclude**

- from recovery in rates either by clarifying or revising its existing regulations;
- (c) gifts, grants, donations, payments, dues, or contributions to other organizations by either utilities or industry associations are currently recoverable and should not be recoverable in utility member rates; and
  - (d) conferences or trainings are carried out by industry associations for which the Commission should prohibit from recovery in rates, and on what basis.

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

- Q21) Please describe any other guidance that the Commission should provide with respect to the rate recovery of industry association dues or utilities' civic, political, and related expenses.**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

- Q22) Please indicate whether there are any above the line, operating accounts other than Account 930.2 in which expenses related to civic, political, public outreach, and similar activities may be recorded (e.g., accounts pertaining to advertising costs) and, if so, what issues the Commission should consider with respect to those accounts.**

BCP does not have a comment on this question at this time but may have a reply comment on March 23, 2022, to this question depending on the responses of other commenters.

## V. CONCLUSION

Based on the foregoing, the BCP provides comments in support of this NOI to amend the USofA's treatment of industry dues. The Commission should consider changes, consistent with BCP's comments, to the accounting treatment of utility trade association dues.

The BCP concludes that those dues should not be recovered through customer rates and assigning those dues to a different account where those costs are non-recoverable through customer rates is in the public interest.

Respectfully submitted,

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