

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

**COMMENTS OF MICHIGAN ATTORNEY GENERAL DANA NESSEL AND THE
CITIZENS UTILITY BOARD OF MICHIGAN
IN RESPONSE TO FERC NOTICE OF INQUIRY**

Michigan Attorney General Dana Nessel and the Citizens Utility Board (CUB) of Michigan submit these comments in Docket No. RM22-5-000 in response to FERC's Notice of Inquiry (NOI). Michigan Attorney General Dana Nessel has been advocating for fairness for ratepayers in many utility rate cases, and sees the issues raised by the NOI as part of this effort to make rates fairer and more affordable. CUB of Michigan is an independent, nonprofit organization formed in 2018 with a mission to educate and engage Michigan consumers in support of cost-effective investment in energy efficiency and renewable energy and against unfair rate increase requests.

INTRODUCTION

Our comments' primary focus is revealing how investor-owned utilities (IOUs) have used the Account 930.2 to improperly classify some spending on advocacy issues as operating activities and thus rate recoverable. The common practice among IOUs fails to make a meaningful distinction between their expenditures related to advocacy that they record as non-operating activities to Account 426.4 (and thus not rate-recoverable), and those expenditures recorded as operating activities to Account 930.2.

The result is that ratepayers across the country may be bearing hundreds of millions of dollars in higher rates in any given year to pay for utilities to support causes and influence policy issues that are not related to the provision of utility service and, in many cases, may be contrary to ratepayers' interests. Other commenters have raised the potential issues of compelled speech implied by cost recovery of these activities. While we share those concerns, FERC need not have a strong opinion on these legal and constitutional implications to conclude that these costs should not be recoverable. Any expenditures that fail to meet FERC's well-established standard for operating activities that "they pertain solely to supplying a regulated utility service and are used in determining rates" should not be recoverable. That is the core issue at stake and, therefore, these comments will focus on which IOU expenses fail to meet that standard.

Question 18 from FERC's NOI probes the issue of "gray areas" for the classification of industry association costs as operating or nonoperating, and is thus the most appropriate question to which much of our comments respond. Our comments also offer suggestions as to how the accounting for these costs should be made more transparent, which are grouped with the corresponding questions from the NOI.

QUESTION 18

To illustrate these gray areas, we will use an example from the largest IOU serving Michigan ratepayers, DTE Energy.

In recent years DTE has charged its ratepayers for the vast majority of its expenses for memberships in corporate associations. DTE has made a distinction between expenditures for dues in what it refers to as "trade associations," such as regional Chambers of Commerce and the National Association of Manufacturers, on one hand, and what it calls "utility industry associations," such as the Edison Electric Institute (EEI) and the Michigan Electric & Gas

Association (MEGA)¹, on the other. Expenses related to trade associations are generally considered nonoperating activities and excluded from the revenue requirement, while expenses related to utility industry associations are generally considered operating activities and included in the revenue requirement.

Information revealed by an inquiry performed by the Association of Businesses Advocating Tariff Equity (ABATE) in a 2019 DTE electric rate case is particularly eye-opening.² From 2013 to 2018, DTE reported nearly \$84 million in corporate membership expenses, and of those, nearly \$80 million were included in the revenue requirement. In response to questions from ABATE as to how the utility decides which membership expenses to include, a DTE witness said that “memberships in organizations that provide key operational support are allowed for ratemaking purposes. All other corporate memberships are excluded. Any dues paid related to influencing legislation or other political activity are recorded to account 426.4, Expenditures for Certain Civic, Political, and Related Activities, which is excluded from base rates.”

The list of associations that make up the “utility industry associations” category, however, are organizations that are no less focused on political activities than those that make up the “trade association” category. The “utility industry associations” include:

EEI: A [study by the Energy and Policy Institute](#) found that the majority of EEI’s spending funds communications work is meant to influence the public, lawmakers and regulatory bodies.

Examples of political positions EEI has taken include opposing bans on the use of fossil fuels in

¹ See Michigan Public Service Commission, U-20561, particularly the testimony of James Dauphinais: <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000008MNXrAAO>

² Ibid.

buildings, promoting utility-scale solar over rooftop solar and adopting more lenient standards for air pollution regulations.

American Coal Ash Association (ACAA): ACAA lobbies the federal government to oppose the designation of coal ash waste as “hazardous” waste.³

Nuclear Energy Institute (NEI): NEI has lobbied against more stringent safety standards for nuclear reactors proposed in the wake of the Fukushima Dai-ichi nuclear disaster. Environmental groups claimed the refusal to impose these more stringent standards has created a situation where a Fukushima-like accident could occur in the U.S.⁴

Whether or not these political stances are well-reasoned and/or defensible is not the point. Regardless of the political issues in question, none of the examples listed above solely pertains to the supply of regulated utility service, and so should not be the financial responsibility of ratepayers.

DTE defended their approach to ABATE by claiming that the only corporate memberships that are included in ratemaking are those for organizations that provide “key operational support,” and that “any dues paid related to influencing legislation or other political activity are recorded to account 426.4.”⁵ But, as detailed above, the organizations that DTE considers as providing “key operational support” are also heavily, if not primarily, engaged in political activities. DTE’s distinction between “trade associations” and “utility industry associations” is one without a difference for the purposes of determining which expenses are “operating” or not.

³ <https://www.scientificamerican.com/article/coal-ash-waste-hazardous-standard-regulation/>

⁴ <https://www.utilitydive.com/news/nrcs-new-fukushima-driven-safety-rules-not-designed-for-the-real-world/546803/>

⁵ See testimony of T.M. Uzenski in Case U-20561: <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000008MNXrAAO>

DTE's example is illustrative and not an exception. For example, in 2019, Consumers Energy, the other major IOU in Michigan, reported that out of \$1.4 million in membership dues paid to EEI and the American Gas Association (AGA), only \$266,000 was classified as "for political purposes" (and thus not eligible for rate recovery).⁶ But it is highly unrealistic to claim that only around 19% of these organizations' activities are politically-related. We have already discussed audits of EEI's expenses that showed upwards of 70% being related to advocacy. AGA, meanwhile, [lists its eight core strengths](#), of which at least half are explicitly advocacy-based, such as:

- "Collects, analyzes and disseminates information to opinion leaders, policy makers and consumers about the benefits provided by energy utilities and the natural gas industry;"
- "Encourages the development, commercialization, and regulatory acceptance of natural gas end-use technologies;"
- "Advocates for natural gas industry issues, regulatory constructs and business models that are priorities for the industry"
- "Promotes growth in the efficient use of natural gas by emphasizing before a variety of stakeholders the benefits of clean, abundant natural gas as part of the solution to the nation's energy and environmental goals;"

QUESTION 6

Information about industry association expenses and whether they are classified as rate-recoverable or not is primarily gathered on an ad hoc basis, such as through discovery requests

⁶ <https://energynews.us/2019/01/28/michigan-regulators-clamp-down-on-utilitys-political-spending/>

by stakeholders in individual utility rate case proceedings. As a result, the information is often not comprehensive and not up to date. The data we do have, such as those for DTE described above, come from the occasional “peek under the hood” when organizations like ABATE probe the utility for answers.

The same transparency problem exists when stakeholders attempt to examine the ultimate uses of these industry association expenses. For example, the breakdown of the purposes of EEI’s expenses from the Energy and Policy Institute report described above came from audits of EEI performed by the National Association of Regulatory Utility Commissioners, but these audits were not ongoing.

QUESTION 9

IOUs should be required to regularly report which industry association dues are classified under Account 930.2 and which are recorded to Account 426.4 (or other accounts). The burden should be on the IOU to demonstrate that those expenses recorded in Account 930.2 are solely pertaining to the provision of utility service. Any justification should include not just the identity of the association in question, but information about what activities the association will engage in with those dues, such as the percentage of the association’s budget that will go toward lobbying, public opinion, legislative affairs, policy research, etc. The utility should specify which association activities pertain solely to the provision of utility service, and only the portion of their dues that the association will use for those activities should be classified as operating activities.

Thank you for the opportunity to comment.

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Respectfully submitted,

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