

**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

**JOINT REPLY COMMENTS OF  
THE OFFICE OF THE PEOPLE’S COUNSEL  
FOR THE DISTRICT OF COLUMBIA AND  
THE NEW JERSEY DIVISION OF THE RATE COUNSEL**

On December 16, 2021, the Federal Energy Regulatory Commission (“Commission”) issued a Notice of Inquiry (“NOI”), that requested comments “on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses.”<sup>1</sup> Additionally, the Commission requested comments on the “ratemaking implications of potential accounting and reporting changes” and comments on “whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes.” The Office of the People’s Counsel for the District of Columbia (“DC OPC”)<sup>2</sup> and the New Jersey Division of Rate Counsel (“NJ Rate Counsel”) hereby respectfully submit the following reply comments in response to comments previously submitted (“Initial Comments”) in Docket No. RM22-5-000.

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<sup>1</sup> *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Notice of Inquiry, Docket No. RM22-5-000, 86 Fed. Reg. 72,958 (December 23, 2021).

<sup>2</sup> DC OPC and NJ Rate Counsel note that they are concurrently filing a second set of reply comments that includes a coalition of additional consumer advocate offices.

DC OPC and NJ Rate Counsel applaud the Commission's initiation of this proceeding to further evaluate the proper rate treatment, reporting, and accounting for industry association dues and associated costs that are nonoperating in nature. Anytime the Commission can add clarity and certainty to the proper regulatory treatment for costs, it directly benefits customers, some of which are discussed below. The additional clarity and certainty that can be provided in this proceeding is particularly valuable in light of the fact that the Commission has not updated its regulations on these issues in several decades. This proceeding is now necessary due to the evolving regulatory landscape, which now involves a predominance of formulary rate mechanisms; new technology that affects how utilities communicate with each other, industry representatives, the public, public representatives, and consumers; and changes in the way lobbying and other nonoperating activities are conducted. Accordingly, the accounting, disclosure, and rate guidance currently in place are no longer sufficient today to that ensure rates, terms, and conditions of providing utility service are just and reasonable. In revising its existing policies and regulations, the Commission must stand on the statutory requirement that it is the utility's<sup>3</sup> responsibility to demonstrate and justify the appropriateness of its accounting and rate recovery of its costs.

In so doing, the Commission should recognize that industry associations are not the only category of outside parties' expenses that should be within the scope of this proceeding. Additionally, lobbying costs should not be the only category of below-the-line costs incurred by industry associations. DC OPC and NJ Rate Counsel recommend the Commission take a multi-pronged approach to provide accounting and/or ratemaking guidance, including by making

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<sup>3</sup> The use of the terms "utility" or "utilities" in these reply comments means both public utilities as defined by Federal Power Act section 201(e) and natural gas companies as defined by Natural Gas Act section 2(6). See NOI at note 3.

changes to its FERC Form Nos. 1, 2, and 2-A to provide additional transparency regarding the accounting and ratemaking treatment of industry association costs.

## **I. INTEREST OF DC OPC AND NJ RATE COUNSEL**

DC OPC is an independent agency of the District of Columbia (“District”) that, pursuant to D.C. Code §34804(d), is statutorily authorized to “represent and appeal for the people of the District of Columbia” in proceedings before the Federal Energy Regulatory Commission (“FERC”) when those proceedings “involve the interests of users of the products of or services furnished by” the District’s public utilities.

The NJ Rate Counsel is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. N.J. Stat. Ann. § 52:27E-50 et seq.

Both DC OPC and NJ Rate Counsel participate actively in state and federal regulatory and judicial proceedings to represent the interests of their respective jurisdiction’s ratepayers and consumers. Additionally, both DC OPC and NJ Rate Counsel are members of PJM Interconnection, LLC (“PJM”) and participates actively in PJM stakeholder activities. As such both agencies have a direct interest in the issues raised in the NOI.

## **II. REPLY COMMENTS**

### **A. Contrary to some commenters’ suggestions, the status quo is insufficient, and now is the time for revision.**

The Initial Comments include diverse opinions on whether changes in the Commission’s regulatory policies and regulations for rate recovery, reporting, and accounting treatment of industry association costs and certain civic, political, and related expenses are warranted. Some commenters stated without condition that the Commission’s current policies and regulations are

sufficient, and the Commission does not need to modify its policies and regulations.<sup>4</sup> In contrast, other commenters made claims regarding the benefits provided by trade associations without any mention of the adequacy or inadequacy of the Commission’s current regulatory regime for these costs.<sup>5</sup> Finally, other commenters provided numerous examples where utilities failed to follow the Commission’s existing policies and regulations on the rate recovery of, reporting of, and accounting for trade association costs and/or certain civic, political and related expenses. Some of these commenters strongly urged the Commission to act now and to adopt new policies and regulations to ensure that these costs were transparent and accounted for in below the line accounts and not recovered in rates. These commenters also proposed a variety of regulatory remedies to include requiring all industry association costs to be recorded in below-the-line accounts and establishing better transparency regarding all trade association costs as well as civic, political, and related expenses.<sup>6</sup>

The examples of noncompliance cited by the commenters resulted from Commission initiated staff audits, litigated rate proceedings before the Commission, and informal and formal challenges regarding annual updates for formula rates. These examples are ample evidence that there is diverse practice among utilities subject to the Commission’s jurisdiction for setting just

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<sup>4</sup> For instance, the Interstate Natural Gas Association of America (“INGAA”) at 6, 8, the American Gas Association (“AGA”) at 5, Joint RTO Commenters at 2-4, MISO Transmission Owners at 3-4 (the MISO Transmission Owners urge the Commission to retain, without changes, its USofA and to continue to apply the principle that the “intended use and the reason behind the payment”...informs and influences the accounting assignment and rate treatment of utility expenditures. Changes are unwarranted and unnecessary because there already is ample oversight and review of the accounting treatment of utility expenditures...) and at 8 (Public Utilities are bound to and follow the USofA and other laws, regulations, and policies with respect to their accounting practices. As a result, public utilities and the Commission already have robust mechanisms in place to ensure compliance and prevent the inclusion of unpermitted lobbying or political activities’ costs in above-the-line accounts.), Wires at 5 (...there is no basis for Commission action at this time.).

<sup>5</sup> For instance, Edison Electric Institute (“EEI”) at 13-17.

<sup>6</sup> For instance, E9 Insight at 1-3, The State Agencies at 16-20, Public Interest Organizations at 4.

and reasonable rates, accounting and reporting regarding trade association costs as well as civic, political, and related expenses.

The examples of non-compliance by utilities make it clear that it is appropriate and timely for the Commission to act now and revise its policies and regulations to ensure: (1) compliance by utilities that only just and reasonable industry association costs are recorded in above-the-line expense accounts and recoverable in FERC jurisdictional rates; and (2) regulators, customers and other interested parties have transparency regarding the costs at issue, are able to monitor utilities' expenditures for industry association costs as well as civic, political and related costs, and can make industry-wide comparisons.

As discussed further in these reply comments, DC OPC and NJ Rate Counsel suggest specific methods and regulatory processes (*i.e.*, a regulatory framework) for moving forward with adopting and instituting appropriate changes for the accounting, reporting, and rate recovery of industry association costs and civic, political, and related expenses.

**B. The burden to justify the accounting for, and rate recovery of, these costs should remain solely the responsibility of utilities.**

Under the current regulatory processes, the burden has unfairly shifted to customers, public interest groups, and others to assess whether a utility's accounting and/or rate treatments are appropriate for these types of costs. However, as numerous commenters point out, the burden for justifying the accounting for and rate recovery of these costs is solely the responsibility of the utility. While many parties participate in formal and informal proceedings at the Commission, customers, regulators, public interest groups, and others have limited time and financial resources to comprehensively investigate these costs and all other costs included for rate recovery in

Commission proceedings or through annual update processes.<sup>7</sup> Further, such proceedings can be lengthy in duration, time consuming, and therefore expensive to be an active party, especially when there is a need to formally challenge the rate recovery of disputed costs.

While the Commission audit staff regularly conducts financial audits of some utilities each fiscal year, in broad terms, these audits cover a small percentage of the utilities subject to the Commission's rate jurisdiction.<sup>8</sup> These compliance audits are completed on a nonpublic basis between Commission staff and the utility and only the final audit report is made public. As a result, customers and other interested parties are not able to know what specific transactions were investigated and evaluated, nor do they have access to the utility's support for its accounting, reporting, and rate treatment. The reality is often customers and others are not able to bring accounting and/or rate recovery issues to the Commission because of funding and time limitations on their ability to investigate and analyze the underlying financial data.

**C. Rate recovery must be denied for any trade association costs, and civic, political and related expenses that are not shown to be just and reasonable**

A utility must demonstrate that the costs recoverable in their rates are just and reasonable. To the extent that the billings from the industry associations, civic or other entities do not clearly demark costs in categories to support the proper accounting and that the costs are just and reasonable, such costs should be automatically recorded in below-the-line accounts and disallowed for rate recovery purposes.

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<sup>7</sup> For instance, Public Interest Organizations at 11-12 (“...utilities have largely (but not exclusively...) succeeded in shifting burden to other parties to disprove the reasonableness of recovering their full trade association dues...”).

<sup>8</sup> The relatively low number of financial audits appears to be a factor of budget and resources devoted to the audit program.

As these comments explain, meaningful revisions in the Commission's policies and regulations can be made without imposing an undue burden on utilities. Utilities have sophisticated accounting systems that can easily classify, track, and report industry association, civic, political, and related costs in accordance with the Commission's policies, precedent, and regulations. And in the event a utility's accounting systems must be modified to comply with new Commission requirements, any modification costs determined to be just and reasonable would be recoverable in rates.

**1. The scope of this proceeding should be broad enough to capture all relevant entities and expenditures.**

In the NOI, the Commission focused its request for comments on the rate recovery, reporting, and accounting treatments of industry association dues and certain civic, political, and related expenses. As a result, Initial Comments to the NOI have predominately focused on the proper treatment of costs attributable to industry associations. DC OPC and NJ Rate Counsel applaud the Commission's efforts to explore these issues related to industry association costs and find it to be timely and necessary. We also encourage the Commission to recognize that the concerns raised regarding industry associations are also relevant for entities that may not generally fit into the category of an "industry association."

DC OPC and NJ Rate Counsel believe that this proceeding should establish appropriate principles on the rate recovery, reporting, and accounting treatments of the characteristics of costs that are generally included and excluded from rate recovery and are generally reported and accounted for in above-the-line or below-the-line expense accounts. In principle, it is a utility's responsibility to properly account for, report, and exclude from rates lobbying and other below-the-line costs regardless of whether the cost stems from the activities of an industry association, chamber of commerce, research organization, foundation, university, outside consultant or

attorney, internal or affiliated source, or other groups and associations (“Other Groups”) that performs nonoperating activities as a part of dues, fees, or other bills paid by the utility. The Commission should evaluate whether these Other Groups support utility operations as part of its review. The majority of the expenses or membership dues associated with these Other Groups are civic in nature and support the community within a utility’s service territory. These types of endeavors fall within the definition of Accounts 426.1 – 426.5. Specifically, Account 426.1<sup>9</sup> is clear that **all payments** made to these types of organizations should be included in this account. As such, DC OPC and NJ Rate Counsel recommend that the scope of this proceeding be broadened to include all entities or Other Groups that engage in nonoperating activities that are billed to a utility. In addition, the Commission should clarify that this standard also applies when entities engage with an affiliate of the utility, to the extent the costs are billed by the affiliate to the utility.<sup>10</sup>

DC OPC and NJ Rate Counsel are very concerned with the treatment of lobbying costs incurred by industry associations. We are also equally concerned with other below-the-line costs incurred by industry associations and other groups that may not otherwise receive proper transparency in billings to the utility and consequently are inappropriately treated as an above-the-line expense. For example, costs of an industry association or Other Groups that provide donations, sponsorships, political contributions to political parties or groups, or provide meals, entertainment, and alcohol to association members and clients should also be tracked by the entity so that the utility can properly account for and report these costs in accordance with Commission policies and regulations. To be clear, DC OPC and NJ Rate Counsel understand that the

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<sup>9</sup> Account 426.1 – Donations states “This account shall include **all payments** or donations for charitable, social or community welfare purposes.”

<sup>10</sup> For example, industry association dues incurred by a parent company that are then billed to utility subsidiaries must be done in a manner that the utility can identify and demonstrate the components of such affiliated billings that are associated with above-the-line and below-the-line activities.

Commission does not regulate industry associations or Other Groups, but it is the responsibility of jurisdictional utilities to ensure the proper accounting and treatment of costs incurred from these entities. When contracting with any outside party, it is the utility's responsibility to clearly identify the portion of the billings from outside parties that were incurred for the provision of services that support utility operations and the portion of the billings that were incurred for nonoperating purposes.

Finally, DC OPC and NJ Rate Counsel recommend that the Commission add clarity to what costs associated with lobbying initiatives should be treated as below-the-line costs that are directly incurred by the utility or billed to the utility from an industry association or Other Groups. Many other nonoperating costs appear to be easily discernable like payments for donations and penalties. However, the point at which lobbying activities begin is subject to much judgement and little guidance. For example, the act of actually meeting with a political official with the intent to persuade is obviously a cost that should be considered lobbying. However, prior to the actual meeting with the political official, there may be costs incurred for time spent preparing presentation materials, conducting research and analysis, and meeting with utility leadership to discuss the strategy and goals, of the meeting with the political official. DC OPC and NJ Rate Counsel believe that the costs associated with additional activities conducted for the primary goal of influencing a political matter also should be considered a lobbying cost. However, in our experience many utilities disagree and, in fact, do not consider such activities lobbying. Accordingly, the Commission should add clarity on what costs and activities constitute lobbying. In doing so, the Commission should not rely on the Internal Revenue Code ("IRC") rules for defining lobbying costs because the IRC rules are not necessarily determined with a focus on just and reasonable ratemaking principles.

**D. Increased Commission accounting and ratemaking guidance is needed for industry association costs.**

The proper accounting for the costs billed from industry associations and Other Groups is a very important matter to the electric industry as the FERC Form No. 1, prepared on a basis consistent with the Uniform System of Accounts (“USofA”), is the primary source of inputs to the wholesale transmission and production formula rate tariffs and the establishment and monitoring of the ratemaking process in general. Commission guidance will enhance the consistency and comparability industry-wide of the accounting and ratemaking treatment of these costs. DC OPC and NJ Rate Counsel strongly recommend that the Commission utilize the information obtained from the record in this proceeding to provide needed clarification to the industry that cannot be efficiently or effectively provided elsewhere.

The costs at issue are not generally reviewed by the Commission outside of an audit proceeding. The practical impact is that the details of audit findings presented in an audit report do not provide precedent<sup>11</sup> and many public utilities simply ignore the findings and recommendations of audit reports issued by Commission staff to another public utility. As a result, this rich body of guidance and situational application then serves of little value to provide industry guidance on accounting and ratemaking. The Commission, consequently, cannot rely on its detailed audit reports and the annual report from the Office of Enforcement to be the primary sources of industry guidance. While these are excellent documents that we fully support, they are not enforceable, except to the entity that was the subject of the audit, and frequently does not create consistent accounting treatments across the utility industry.

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<sup>11</sup> Procedures for Disposition of Contested Audit Matters, Order No. 675, 71 FR 9698, P 32 (Feb. 27, 2006), III FERC Stats. & Regs. ¶ 31,209 (Feb. 17, 2006). *Order on rehearing*, Order No. 675-A, 115 FERC ¶ 61,189, 61,682, P 18 (May 18, 2006).

**E. Detailed accounting and rate guidance will aid evaluations of costs in regulatory proceedings, especially formula rate proceedings.**

The costs of industry associations and Other Groups as well as lobbying and other nonoperating costs are generally evaluated to a certain level through reviews in the formula rate annual update process. However, these efforts are typically substantially less thorough than a FERC audit due to constraints contained in most formula rate protocols limiting the duration of inquiry, undefined limits on burden, and scope of information to be reviewed, among others. Nevertheless, these formula rate annual update reviews can be more efficient and effective by having enhanced guidance on the accounting and rate treatment of industry association dues. Without guidance, a utility and its stakeholders will rigorously defend differing interpretation of existing guidance, often leading to compromise or impasse when there could be accounting and ratemaking guidance to decide the matter. Such guidance will help streamline the formula rate annual update process and save time and resources for both utilities and stakeholders.

The USofA requirements for these types of costs have not been revisited or updated since they were originally adopted and codified by the Commission. However, DC OPC and NJ Rate Counsel recommend that the Commission provide guidance on the specific functions of industry associations and Other Groups that are proper to include in rates and also provide clear instruction to the type of activities that should be excluded from rates. For membership costs of an industry association and Other Groups to be recovered in rates, the utility should be able to demonstrate that its membership and the benefit of membership is directly linked to utility operations.<sup>12</sup> Likewise, membership costs for the operations and functions of industry associations and Other

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<sup>12</sup> *Duke Energy Progress, LLC*, 171 FERC ¶ 61,041, 61,412, P 52 (2020).

Groups that are not directly associated with utility operations should be excluded from rates.<sup>13</sup> This burden of proof is parallel to the Commission's treatment of advertising expenses whereby the D.C. Circuit was clear that a casual connection between advertising and consumer benefits did not meet the criteria as an operating expense of a utility.<sup>14</sup> Similar to advertising costs, many of a utility's memberships in Other Groups focuses on improving the utility's public image, advertising perks, sponsorships etc. For the costs that are properly included in rates, the Commission should provide accounting details on whether the entirety of those costs should be recorded in Account 930.2 or portions of the costs should be recorded to operating expense accounts in the 500 Account series of the USofA.

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<sup>13</sup> See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,070, 61,307, P 49-50 (2006). The Commission explained that certain challenged RTO activities were related to utility operations and identified other costs "that would not be recoverable, such as participation in Political Action Committees, candidate fundraising, entertainment expenses (e.g., meals, sporting events, junkets) and other activities...that do not directly relate to ISO-NE's operations." Similarly, the cost of membership in industry associations and Other Groups that do not directly relate to utility operations should not be recoverable.

<sup>14</sup> In the United States Court of Appeals for the D.C. Circuit ("D.C. Circuit") opinion in *Pub. Serv. Com. Of N.Y. v. FERC*, 813 F.2d 448 (D.C. Cir. 1987), the D.C. Circuit discussed the high evidentiary bar utilities must meet to collect promotional advertising expenses. In that case, the D.C. Circuit upheld FERC's disallowance in Opinion No. 240 of expenses for advertising designed to enhance the company's image over the company's argument that such advertising would help it attract and retain employees and raise capital. As the D.C. Circuit explained, in Opinion No. 240, FERC found that it "requires no showing of a direct consumer benefit when the [advertising] costs are oriented toward information and conservation; however, when the costs are promotional (such as here), a showing of direct consumer benefit is required." *Id.* at 454, citing *Tenn. Gas Pipeline Co.*, 32 FERC ¶ 61,086, Opinion No. 240 at 61,234, *reh'g denied*, 33 FERC ¶ 61,005 (1985) (emphasis in original). The D.C. Circuit then summarized FERC's policy that "to overcome the presumption against compensation for institutional or promotional advertising," the rate applicant must show "that its advertising directly benefits consumers." *Pub. Serv. Com. of N.Y. v. FERC*, 813 F.2d at 455. The D.C. Circuit affirmed FERC's determination that the utility had not provided sufficient testimony to establish a causal connection between the advertisements and the customer benefits described by the utility's witness. *Id.* at 456. That testimony included a claim that the institutional advertising "enhances the public image" of the utility, which aids the utility "in its continuing efforts to obtain new capital from the financial markets," and since "ratepayers are ultimately responsible for the cost of capital" which the utility devotes to pipeline activities, they "obviously benefit from every effort" the utility makes to "obtain capital at the lowest possible rate," and further that the advertising is "beneficial because it aids Tennessee in attracting and retaining employees." *Id.* (internal citations omitted).

For example, it is DC OPC and NJ Rate Counsel's experience that utilities automatically record certain industry association costs<sup>15</sup> directly to operating accounts like Account 566, Miscellaneous Transmission Expense, or other transmission expense accounts. We do not believe this treatment is appropriate unless there are identified activities of the industry association or Other Groups that is specifically contracted with to provide services directly supporting transmission projects. We are concerned that utilities are improperly assigning these costs to the transmission function where the services were not specifically supporting contracts for transmission projects. While there are certain benefits of industry associations to the transmission function, they are generally applicable and provide similar benefits to other utility functions as well (e.g., distribution and production). Accordingly, it is DC OPC and NJ Rate Counsel's view that industry association dues and costs of other groups should be recorded in Account 930.2 consistent with the description of the account and with the general nature of an association that supports multiple utility functions.

Accounting and ratemaking guidance should also make clear that a utility should not record any industry association costs in Account 930.2 or other above-the-line accounts, if the activities of the association do not support the utility's electric operations. For example, an electric utility that also has a natural gas distribution department may be a member of an industry association supporting gas distribution companies. DC OPC and NJ Rate Counsel believe such natural gas related industry associations should not be reflected in the FERC Form No. 1 as a cost in Account 930.2 and should not be reflected in the cost of providing electric service.

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<sup>15</sup> Note that some industry associations have now moved to a subscription-based payment method compared to dues in order to circumvent the Commission's policies on industry association dues.

Additionally, the Commission should provide clear guidance on the scope and intent of what lobbying costs are in the cost-of-service context. As stated above, lobbying should not just be limited to the time physically appearing before a political official or group being lobbied. Rather, the Commission should consider the different ways in which lobbying is undertaken using technology and social media platforms. For example, social media enables utilities to target advertising and messaging campaigns to specific political officials or groups with the intent to influence their actions. Such targeted advertising is within the same spirit of lobbying costs historically disallowed from rates; they just have a different method or a new look. Additional examples, include websites, automated text messaging or calling services, etc. Furthermore, the Commission should clarify that the lobbying should include all costs and activities, including social media marketing consultants, internal planning meetings, travel and entertainment costs, and development of documents, leading to or supporting the actual lobbying communication. For these types of costs, where the shareholder benefit outweighs benefits to ratepayers, the Commission should classify as lobbying related, making clear that a minor alleged benefit to ratepayers does not make a cost recoverable that substantially benefits shareholders.<sup>16</sup>

Finally, when evaluating costs other than lobbying from an industry association or Other Group that should be disallowed from rate recovery, the Commission should make clear that donations, sponsorships, political contributions to political parties or groups, or the cost of meals, entertainment, and alcohol to association members and clients should also be identified for proper accounting and rate treatment by the utility.

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<sup>16</sup> *ISO New England Inc.*, 117 FERC ¶ 61,070, P 49 (2006).

**F. Increased transparency is needed in FERC Annual Report Form Nos. 1 , 2, and 2-A for industry association costs including civic, political and related expenses**

The commenters who urged the Commission to move forward with changes to the Commission’s policies and regulations regarding the accounting for and rate recovery of industry association costs as well as civic, political, and related expenses also urged the Commission to require more transparency regarding these costs.<sup>17</sup> DC OPC and NJ Rate Counsel believe this level of transparency can be easily achieved by the Commission by issuing a Notice of Proposed Rulemaking and proposing to add a new schedule to FERC Annual Report Form Nos. 1, 2, and 2-A requiring each utility to identify and describe the nature and purpose of, and accounting for, all payments made to all industry associations and Other Groups providing goods and services during a calendar reporting year. This schedule would provide users of annual report forms with a comprehensive summary of all payments made to industry associations and Other Groups such that users can determine how much of the payments made were recorded in above-the-line” expense accounts, below-the-line expense accounts, construction work in progress, or other accounts and can make appropriate inquiries about specific payments and the associated accounting distributions.

**G. The Commission should not rely on other lobbying disclosures and reporting requirements as a substitute for adding a new,**

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<sup>17</sup> For example, see comments by the State Agencies at 14-15 and Public Interest Organizations at 15-16 (New transparency requirements should apply to all utilities that recover costs for Commission-jurisdictional service. Transparency is essential for ensuring just and reasonable rates, regardless of a utility’s ownership structure.) (...transparency is necessary for spending on promotional and political advertising, and legal expenses.) and at 21 (...it is essential that utilities seeking to recover trade association dues provide more specific information about how the trade association is using those funds than a breakdown of spending into vague categories.).

**comprehensive reporting schedule to FERC Annual Report Form  
Nos. 1, 2, and 2-A**

Several commenters argue that the Commission does not need to modify its policies and regulations and urge the Commission to rely upon lobbying disclosure reports submitted to the Internal Revenue Service and in compliance with the Lobbying Disclosure Act (“LDA”).<sup>18</sup> The commenters assert these reports and disclosures will provide the Commission and interested parties with the needed information about lobbying activities and costs.

DC OPC and NJ Rate Counsel strongly urge the Commission to reject this proposal for several key reasons. *First*, while these reports and disclosures may be useful to the Commission and other interested parties examining a utility’s trade association and similar costs, they do not provide a comprehensive summary contemplated by DC OPC and NJ Rate Counsel’s proposal of adding a new reporting schedule to FERC Annual Report Form Nos. 1, 2, and 2-A. *Second*, these reporting and disclosure requirements are not based upon the Commission’s statutory responsibilities under the Federal Power Act and Natural Gas Act for determining just and reasonable rates. *Third*, the lobbying costs identified in these reports and disclosures are merely a subset of the broader categories of costs that the Commission is focused on in this proceeding. Therefore, these reports and disclosures do not achieve an appropriate level of transparency and we urge the Commission to reject this proposal.

DC OPC and NJ Rate Counsel recognize that adding a new schedule to FERC Annual Report Form Nos. 1, 2, and 2-A will cause an increase in the hours required to complete an annual

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<sup>18</sup> For example, INGAA at 5 and AGA at 5. EEI explains it uses the IRC definition of “lobbying and political activities” under IRC section 162(e), in addition to the definitions in the LDA to identify the advocacy/lobbying portion of its dues which is not recoverable through customer rates. EEI at 6. EEI points to its 2022 Lobbying, Advocacy, and Other Expenditures Report posted on its website to provide additional transparency about its activities and funding. EEI at 17.

report form. However, we believe that any increase in burden on utilities filing FERC Annual Report No. 1, 2, or 2-A will be offset by benefits these annual report forms will provide to the Commission, customers, regulators, consumer councils and others seeking access to the information contained therein.

**H. The Commission should adopt a multi-prong approach to increase transparency and promote**

DC OPC and NJ Rate Counsel believe a multi-prong approach is a workable and efficient way to proceed on providing guidance and clarification on Commission policy on the rate recovery and accounting for industry association costs including civic, political, and related expenses as well as achieving greater transparency on these costs. This framework provides the Commission with the flexibility to take multiple and possibly concurrent paths forward to achieve its desired goals regarding the rate recovery, accounting, and transparency of these costs. For example, the Commission could:

- Issue a Policy Statement or Accounting Guidance that provides clarity on which operating expense accounts in the Uniform Systems of Accounts may be used to record industry association costs and identifies the criteria that should be followed in the event industry association costs are recordable in functional operation and maintenance accounts other than Account 930.2.
- Issue a Notice of Proposed Rulemaking to propose adding a new schedule to FERC Annual Report Form Nos. 1, 2, and 2-A requiring utilities to identify and describe the nature and purpose of and accounting for all payments made to all industry associations and other groups providing goods and services during the reporting calendar year. This schedule would provide users of annual report forms with a comprehensive summary of all payments made to

industry associations and Other Groups such that users can determine how much of the payments made were recorded in above-the-line expense accounts, below-the-line expense accounts, construction work in progress, or other accounts.

- Hold working group sessions and/or technical conferences, as needed, to drill down on the proper accounting, reporting, and rate recovery issues to be addressed by any Commission proposals.

### III. CONCLUSION

DC OPC and NJ Rate Counsel appreciate the opportunity to submit these comments on this very important matter. We recommend that the Commission take a renewed look at the activities and operations of industry associations and Other Groups to ensure the proper delineation and treatment of those costs that directly support utility operations versus those costs that do not directly support utility operations. In doing so, we recommend the Commission establish clear guidance and reporting and disclosure requirements for transparency.

Respectfully submitted,

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