

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

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

COMMENTS OF WIRES

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) December 16, 2021 Notice of Inquiry (“NOI”) in the above-captioned proceeding,¹ WIRES, on behalf of its members, submits the following comments.²

I. INTRODUCTION

WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies.³ WIRES promotes investment in electric transmission and consumer and environmental benefits through development of electric transmission infrastructure.⁴ Since its inception, WIRES has focused on supporting

¹ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021).

² This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

³ WIRES is a tax-exempt trade association under section 501(c)(6) of the Internal Revenue Code.

⁴ For more information about WIRES, please visit www.wiresgroup.com.

investment in needed and beneficial transmission infrastructure – investments that Congress and the Commission have recognized are critical to establish a resilient, reliable, cost-effective, modern, and clean bulk power system.

On March 17, 2021, the Center for Biological Diversity filed a petition for rulemaking requesting that the Commission amend the Uniform System of Accounts (“USofA”) requirements for payments to industry associations engaged in lobbying or other influence-related activities.⁵ In particular, the Petition requested that utilities be required to record dues paid to all industry associations in Account 426.4⁶ rather than Account 930.2.⁷ WIRES filed comments in response to the Petition demonstrating that the Petition was unnecessary since the Commission’s existing rules appropriately and adequately account for utility recovery of trade association dues.

On December 16, 2021, the Commission issued the instant NOI to examine its current policies and regulations, to seek comment on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses, to identify any potential changes that may be necessary to ensure that such expenditures are appropriately accounted for under applicable regulations, and to ensure

⁵ Center for Biological Diversity, Petition for Rulemaking to Amend the Uniform System of Accounts’ Treatment of Industry Association Dues, Docket No. RM21-15-000 (filed Mar. 17, 2021) (“Petition”).

⁶ 18 C.F.R. pt. 101, Account 426.4.

⁷ 18 C.F.R. pt. 101, Account 930.2.

that recovery of these expenditures through Commission jurisdictional rates is just and reasonable. WIRES submits the following comments in response to the NOI.

II. COMMENTS

The Commission's NOI raises important questions regarding the delineation of recoverable and non-recoverable industry association dues for rate purposes, and the adequacy of the transparency in industry association expenses and segments of industry association dues charged to utilities, including expenses for civic, political, and related activities. A particular focus of the NOI is on determining where the line between public and educational expenses, which are generally permissibly charged to ratepayers, is drawn relative to lobbying expenses, which are generally chargeable to the utility. While the Commission's desire to review and, if necessary, provide additional guidance or clarification as to what expenses are properly recoverable in rates may be worthwhile, it is critical to avoid trying to fix what is not broken, notwithstanding the best of intentions, or to create or impose additional unnecessary, costly, and time-consuming processes or burdens.

A. The Commission's Existing Rules Appropriately and Adequately Account for Utility Recovery of Trade Association Dues.

The NOI specifically seeks to explore whether the Commission's regulations need to be modified or additional guidance is required to ensure the proper classification of utility and industry association costs between Accounts 426.4 and 930.2.⁸ The

⁸ NOI at p. 15.

Commission explains that the inquiry could reduce the frequency of rate proceedings that review industry association dues and help ensure that industry association dues are appropriately categorized for recovery purposes.

As an initial matter, the Commission’s longstanding determination as to how electric utilities should account for and include expenses in Account 930.2 is well-reasoned, provides transparency as to such costs, and puts the burden of proof appropriately on utilities seeking of such expenses. With respect to a utility’s ability to recover dues associated with trade association membership, the Commission has said:

The Commission has allowed utilities to allocate EEI contributions to wholesale customers only to the extent the contributions are for research and development programs to which wholesale customers themselves could not contribute. However, that portion of EEI contributions used for lobbying activities may not, under any circumstances, be included in the utility’s cost of service. Thus, the portion of EEI expenditures that a utility may include, if any, in its cost of service depends on the purpose for which the contributions were made. The burden of breaking down EEI expenditures falls upon the utility seeking to include such contributions in its cost of service.⁹

In a later case, the Commission affirmed an Administrative Law Judge’s determination that a utility’s membership in an industry trade association met the standard set in *Delmarva*, that membership provided benefits to customers, and that the allocation of costs was appropriate.¹⁰

⁹ *Delmarva Power & Light Co.*, 58 FERC ¶ 61,169 at 61,509 (1992) (“*Delmarva*”).

¹⁰ *Pacific Gas and Electric*, 173 FERC ¶ 61,045 at PP 221 and 228 (2020).

On the other hand, the Commission has long recognized that costs for certain activities, such as charitable donations, political activities, and lobbying costs are not recoverable from ratepayers and has established accounts for tracking those expenditures. As there is no indication either that existing Commission procedures are confusing, inadequate or are inconsistent with Commission precedent, there is no basis for further action.

The NOI further speculates that there may be an opportunity to reduce the number of rate cases where recovery of trade association dues is an issue. But here again, the Commission appears to be exploring a solution in search of a problem. The fact of the matter is that there is no indication in the NOI that issues regarding the categorization of industry trade association dues are occurring with a level of frequency, if at all, in rate proceedings such that additional regulations or clarification is warranted. Simply put, the NOI provides no data, or even anecdotal evidence, regarding how often, if ever, issues regarding trade association dues have arisen in rate proceedings over a set period of time. In the absence of any record whatsoever of a history or expectation of rate proceedings that could be reduced by additional guidance or more regulations, there is no basis for Commission action at this time.

B. Organizations Like WIRES Provide Broad Benefits to Consumers and the Industry and Do Not Engage in Civic, Political, and Related Activities.

The Commission has long recognized the value of perspectives from industry organizations such as WIRES, particularly in considering matters with broad policy

implications.¹¹ WIRES provides a significant range of benefits to those who depend on and seek to promote a reliable, resilient, and clean grid. The mission of WIRES and its members is to promote investment in the North American electric transmission system, robust and effective transmission solutions to economic, environmental, and reliability challenges, and the reduction or elimination of uneconomic barriers to transmission development. This mission is accomplished through the development and dissemination of information, strategic advocacy, and innovation in regulatory, policymaking, industry, and educational forums.

In particular, WIRES works to advance the understanding by the public and its representatives of the unique importance of the electric grid and the challenges that slow or prevent its upgrade or expansion in the public interest. WIRES actively supports and advances cooperation and collaboration among government, industry, and financial institutions in pursuit of energy diversity, access to clean energy supplies, electric reliability, and lower cost power through transmission solutions.

WIRES highlights the benefits of effective and timely regional and inter-regional planning procedures and regulations that strengthen and modernize the transmission grid to promote and enhance consumer benefits from improved reliability, operational

¹¹ See *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,265 at P 9 (2007) (granting late intervention “[w]here membership associations meet the standard of Rule 214, [the Commission] should encourage informed pleadings...” See also *S. Nat. Gas Co.*, 130 FERC ¶ 61,193 at PP 5-7 (granting later intervention and noting that the trade association “is able in this proceeding to present [its members’] common views regarding an issue of continued significance for the industry”).

flexibility, cost-effective electricity, access to new generation including renewable energy, and system security.

WIRES also actively promotes state and federal policies that (a) support transmission investment and capital attraction, reduce business, financial and regulatory risk and provide greater certainty for investors, (b) diminish unreasonable and uneconomic barriers to transmission development, (c) favor competitive bulk power markets, reduce transmission congestion, and improve customer access to all sources of electric generation, including renewable resources, and (d) lead to consistent and efficient regional and inter-regional transmission solutions.

WIRES advocates for efficient and collaborative regional, state, and federal facilities siting processes and procedures that take account of the interests of all stakeholders, are sensitive to environmental concerns, and ensure beneficial and timely infrastructure investments. WIRES also works aggressively to advance the equitable, economically justified, practical, and where appropriate, broad allocation of the costs of transmission facilities and operations across the shared transmission network.

WIRES accomplishes all of these objectives through a variety of means. WIRES follows and actively participates in regulatory proceedings by submitting comments, studies, and testimony on relevant legislative and regulatory proposals and policy matters before FERC, Congress, DOE, the ITC, and other relevant agencies. WIRES also conducts or funds transmission and technology studies and provides briefings that

educate policymakers and the public. In addition, WIRES organizes and hosts numerous transmission-focused meetings, discussion panels, and webinars throughout each year that feature notable subject matter experts and influential speakers.

All of these beneficial activities are in furtherance of WIRES' vision and mission and do not constitute the type of civic, political, and related activities that are the core concern of the NOI. Simply put, WIRES is not a lobbying organization, and it does not engage in political activities. To the extent any of its activities arguably were to fall within the scope of lobbying expenses, if there were any, the costs and expenses associated with such activities would be separately tracked by WIRES. However, tracing, tracking, and reporting such de minimis amounts with finer granularity would be burdensome to a leanly staffed organization such as WIRES without yielding much in the way of beneficial results. Accordingly, to the extent the Commission were to consider more regulations or guidance to its accounting regulations on trade association dues, it should also consider exceptions or exemptions for those trade associations that are not registered lobbying organizations or engage in de minimis lobbying activities.

IV. CONCLUSION

WIRES respectfully submits these comments for consideration by the Commission.

Respectfully submitted,

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