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Comments on Petition for Rulemaking  
Federal Energy Regulatory Commission  
Docket #AD21-9-000

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The National Whistleblower Center (NWC) files this comment letter in support of Center for Biological Diversity's petition to the Federal Energy Regulatory Commission (FERC) to amend the Uniform Systems of Accounts (USofA) requirements for payments to industry associations engaged in lobbying or other influence-related activities. Petitioner requests that FERC amend the USofA rules to require that utilities record their industry association dues payments as presumptively non-recoverable for rate recovery purposes. For the reasons set forth below, such a rule change is critical to preventing fraud and other corruption in connection with utility funding of trade associations. It is especially needed to prevent illegal use of ratepayer funds to support political activities to block or delay action on climate change.

NWC is a nonprofit education and advocacy organization that promotes democracy and the rule of law using one of the most effective anti-corruption strategies: whistleblower protection. Progress on virtually all societal challenges requires transparency and accountability to the rule in law, and this in turn requires protecting whistleblowers, who oftentimes are the key to deterring and prosecuting fraud, bribery and other forms of corruption.

Combatting corruption is critical to addressing the climate emergency. For far too long, powerful economic entities with profits tied to fossil fuel use have engaged in disinformation campaigns, funding of dark money political operations and other deceptive maneuvers to delay action on climate change and avoid accountability for the widespread human suffering and economic damage their products cause.

Among those entities participating in such maneuvers are utility trade associations and their member companies. The Edison Electric Institute (EEI), in particular, has participated in a multi-decade, behind-the-scenes effort to sow doubt about the role of fossil fuels in causing climate change and about whether climate change is harmful.<sup>1</sup>

Under current FERC rules, association dues paid by utilities are shown in a USofA account (930.2) that is presumptively recoverable from ratepayers. For those concerned about potential misuse of ratepayer funds, such as use of ratepayer funds for political activities to delay action on climate change, this accounting method is highly problematic. The presumption of

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<sup>1</sup> <https://www.energyandpolicy.org/utilities-knew-about-climate-change/>

recoverability means that utilities have no obligation to explain how the trade associations are using their dues payments.

This insulation from any disclosure obligation increases the risk of fraud. That is, if not required to prove recoverability of association dues, utilities can easily use ratepayer funds to invest in political activities by trade associations while falsely asserting that association dues are being used for other purposes. The lack of a disclosure obligation also enables utilities to use ratepayer funds to fund campaigns to block climate action while assuring the climate-concerned public that they are responsible corporate citizens.

In recent years, utilities have shifted significantly on climate issues. Forty-nine utilities have now pledged to achieve net zero carbon emissions by 2050 and many have made significant investments in renewable energy and energy efficiency.<sup>2</sup> EEI's official position on climate change is in support of policy action to reduce carbon emissions.<sup>3</sup> Yet ratepayers, shareholders, policy makers and the public have every reason to question whether the era of utility funding of trade associations' political activities to block progress on climate change has truly come to a close.<sup>4</sup>

For example, after many years of attacking policies supporting expansion of rooftop solar, EEI recently softened its public position. However, an undercover investigation revealed that this shift did not involve any lessening of opposition to this extremely popular carbon-free energy technology. Instead, with the help of a public relations firm, it embarked upon "Project Lexicon" to change its rhetoric so that opposition to rooftop solar was concealed; the term "rooftop solar" would be replaced with "private solar."<sup>5</sup>

Some individual utilities continue to use deceptive means to block climate progress as well. For example, in California and the Pacific Northwest, two nonprofit advocacy groups were recently established to block local policies aimed at reducing carbon emissions in buildings. Each receives significant funding from utilities but maintains a website that does not disclose this relationship; instead, the websites state that funding support comes from unions, farmers and energy-intensive businesses.<sup>6</sup>

The Commission can draw lessons from the host of federal and state whistleblower protections have been put in place to ensure that deceptions by powerful economic interests on matters of

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<sup>2</sup> <https://sepapower.org/utility-transformation-challenge/utility-carbon-reduction-tracker/>

<sup>3</sup> <https://www.eei.org/issuesandpolicy/pages/cleanenergy.aspx>

<sup>4</sup> Shareholders have increasingly been raising concerns about the discrepancies between public companies' claims about climate and actual conduct. <https://www.politico.com/news/2021/04/20/investors-corporate-climate-lobbying-activity-483429?nname=the-long-game&nid=00000171-5b34-d92d-a5ff-db3ee8890000&nrid=0000014f-8915-d780-a9ef-9d7f51410000&nlid=2672637>

<sup>5</sup> <https://www.utilitysecrets.org/eei-lexicon-project/>

<sup>6</sup> <https://www.washingtonpost.com/climate-environment/2021/02/23/climate-change-natural-gas/>

public concern will be exposed. Such protections have been critical to protecting consumers, public health and the environment from wrongdoing by corrupt actors in the energy industry. When those protections are not adequately enforced, regulators and others typically find out about fraud and other corruption long after significant damage is done. For example, if whistleblower Carlette Walker had been protected from retaliation by her employer South Carolina Gas & Electric, ratepayers might not have been forced to bear a significant portion of the costs of the \$9 billion SCANA nuclear power fiasco.<sup>7</sup>

There can be little doubt that greater disclosure requirements, enforced with the help of whistleblowers, is a critical tool for addressing corruption. Federal investigators' understanding of the First Energy bribery scandal, which resulted in legislation forcing ratepayers to cover a \$1 billion bailout of two failing power plants, was enhanced by Michael Pircio, the auditor who blew the whistle pursuant to the Dodd-Frank Act on First Energy's allegedly deceptive financial statements.<sup>8</sup>

Ultimately, this petition raises a simple question: can utilities be trusted to report accurately, and without meaningful oversight, on whether their dues payments to associations are being used for political purposes. Given the history of deception in this sector, the answer is clear: utilities should not be trusted. Greater oversight by regulators, aided by whistleblowers, consumer advocates and others, is needed. Utilities should carry a burden of proving that dues payments are *not* for political purposes before they can be recovered.

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<sup>7</sup> <https://www.bizjournals.com/charlotte/news/2018/11/21/former-sce-g-accountant-testifies-scana-execs.html>; [https://www.postandcourier.com/news/local\\_state\\_news/ex-scana-ceo-pleads-guilty-to-fraud-in-sc-nuclear-fiasco-im-sorry-its-come/article\\_6687ce9c-751c-11eb-8678-07d1d205c4db.html](https://www.postandcourier.com/news/local_state_news/ex-scana-ceo-pleads-guilty-to-fraud-in-sc-nuclear-fiasco-im-sorry-its-come/article_6687ce9c-751c-11eb-8678-07d1d205c4db.html)

<sup>8</sup> <https://www.cleveland.com/ohio-utilities/2020/10/former-auditor-who-launched-sec-investigation-accuses-firstenergy-of-whistleblower-retaliation.html>