

**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 REGARDING THE REGULATORY TREATMENT OF INDUSTRY
ASSOCIATION DUES OF THE NUCLEAR ENERGY INSTITUTE**

In response to the Federal Energy Regulatory Commission’s Notice of Inquiry (NOI) in the above-captioned proceeding, the Nuclear Energy Institute (NEI) submits these comments on the rate recovery, reporting, and accounting treatment of industry association dues under the Commission’s Uniform System of Accounts (USofA).¹ The NOI seeks information on how utilities classify, record, and recover industry association dues, and explores potential regulatory changes to improve the transparency and implementation of the USofA.

As discussed below and in NEI’s comments on the Center for Biological Diversity’s Petition for Rulemaking to Amend the USofA’s Treatment of Industry Association Dues (Mar. 17, 2021) (Petition),² there is no significant, generic problem justifying Commission action. Industry associations already make extensive financial and operational information available to the public in an annual Form 990, *Return of Organization Exempt from Income Tax*. Furthermore, under current regulations and precedent, the lobbying-related portion of trade association dues already are included in Account 426.4. NEI and its members use robust

¹ Notice of Inquiry, Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses, Docket No. RM22-5-000 (Dec. 23, 2021).

² See Motion to Intervene and Comments of the Nuclear Energy Institute, Docket No. RM21-15-000 (Apr. 26, 2021).

processes to ensure that the lobbying-related portion of NEI's dues are appropriately identified. Current regulations and practices involve multiple levels of oversight and transparency regarding the non-lobbying portion of association dues included in Account 930.2.

Nor is there a reason to alter Account 426.4's exception allowing for cost recovery of expenditures directly related to appearances before regulatory and other governmental bodies in connection with a utility's operations. NEI's participation in regulatory and legal proceedings illustrates the appropriateness of this exception. NEI leads industry-wide initiatives to address generic regulatory, technical, and legal matters, and because of NEI's actions, member companies are not required to expend individual resources to address these matters. NEI's work on behalf of its members benefits customers by facilitating high levels of safety, reliability, and economic efficiency. Because of these efforts—and the prudent investments and hard work of experienced operators—U.S. nuclear plants generate power more consistently and reliably than any other resource—roughly 800 billion kilowatt-hours annually. As a result, nuclear power plays a key role in efforts to meet the nation's clean energy goals: nuclear generates most of our nation's carbon-free electricity and is by far the largest source of U.S. clean energy generation.³

Narrowing the Account 426.4 exception allowing for cost recovery for appearing before regulatory and other governmental bodies also would place the Commission a great distance from its role as an economic regulator. The Commission would find itself deciding which expenditures to participate in proceedings in connection with a utility's operations are appropriate and which are not. Nothing in the record demonstrates any significant, generic problem with the current implementation of USofA that warrants such a sweeping change.

³ NEI, Nuclear by the Numbers at 7 (Aug. 2020), <https://www.nei.org/CorporateSite/media/filefolder/resources/fact-sheets/nei-nuclear-by-the-numbers-092520-final.pdf>.

I. ABOUT NEI

NEI is the trade association for the commercial nuclear technologies industry. Like other trade associations, NEI receives dues from its members. Because some NEI members seek to recover the non-lobbying portion of those dues from ratepayers, NEI members would be directly affected by the changes discussed in the NOI and the Petition.

NEI's mission is to promote the use and growth of nuclear energy through efficient operations and effective policy.⁴ NEI is a non-profit corporation registered under section 501(c)(6) of the Internal Revenue Code (IRC). Membership in NEI is open to firms, corporations, unions, government agencies, universities, and associations that are interested in and subscribe to NEI's mission. NEI has more than 300 members, including companies licensed to own or operate commercial nuclear power plants in the United States and abroad, as well as nuclear plant designers, major architectural and engineering firms, entities that process nuclear fuel, and other organizations involved in the nuclear industry.

NEI's governance includes a board of directors comprised of executives from member companies. The board of directors approves NEI's annual budget and membership dues structure. NEI's dues structure includes different categories of membership. Companies licensed to operate nuclear power plants are in one category and their annual dues are determined based on the number and size of the reactors they are licensed to operate. In addition to invoicing reactor licensee members for annual dues, NEI invoices members for their share of costs to participate in the Personnel Access Data System and Combined Adversary Force, two programs that allow members to more cost effectively comply with the U.S. Nuclear Regulatory Commission (NRC) security regulations.

⁴ NEI, About NEI, <https://www.nei.org/about-nei> (last visited Feb. 14, 2022).

II. COMMENTS

A. Industry associations already make extensive financial and operational information available to the public.

Like most tax-exempt organization, NEI files with the Internal Revenue Service (IRS) an annual Form 990, *Return of Organization Exempt from Income Tax*. Before it is filed, NEI makes a complete copy the Form 990 available to the board of directors. As required by the IRS, NEI makes the Form 990 available for public inspection upon request. Form 990s also are available and searchable on websites hosted by organizations like GuideStar and ProPublica.

NEI's Form 990 lists the revenue NEI receives in member dues, assessments, or similar amounts as defined in Revenue Procedure 98-19 as well as from conferences and publications. The Form 990 outlines NEI's three largest program services as measured by total expenses and the five highest compensated independent contractors. The form details NEI's expenses including those associated with employee salaries, benefits, and taxes; office space and other facilities; information technology; and travel. NEI fully catalogues in the Form 990 all grants and other financial assistance greater than \$5,000 that NEI provides to other organizations. And as an organization that receives membership dues, NEI reports IRC section 162(e) nondeductible lobbying and political expenditures in the Form 990.

B. Association dues attributable to lobbying activities already are excluded from Account 930.2 and recorded in Account 426.4.

Under the Commission's USofA regulations, items recorded in Account 930.2, "Miscellaneous general expenses," are presumptively recoverable. Account 930.2 "include[s] the cost of labor and expenses incurred in connection with the general management of the utility not

provided for elsewhere.”⁵ “Industry association dues for company memberships” are listed as an item that may be recorded in Account 930.2.

Items recorded in Account 426.4, “Expenditures for certain civic, political and related activities,” are presumptively non-recoverable. Account 426.4 includes:

expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility’s existing or proposed operations.⁶

Reading these regulations together, the lobbying-related portion of industry association dues is recorded in Account 426.4 (and presumptively non-recoverable), and the portion of those dues related to general utility management and operations is recorded in Account 930.2 (and presumptively recoverable).

NEI and its members follow robust and legally-mandated processes to ensure that lobbying-related association dues are properly excluded from Account 930.2. The recoverable portion of association dues are also reviewed by FERC and state commissions, helping to further ensure that customers pay only permissible costs included in Account 930.2.

As required by IRC section 6033(e), NEI notifies its members of the portion of dues reasonably estimated to be used for expenditures related to lobbying activities.⁷ These notices

⁵ 18 C.F.R. Part 101, § 930.2.

⁶ 18 C.F.R. Part 101, § 426.4.

⁷ 26 U.S.C. § 6033(e)(1)(A)(ii). If the amount for which notice is provided proves to be too low, NEI must pay a proxy tax on the deficiency balance or seek IRS permission to carry forward the underestimated amount to future years’ dues notices. 26 U.S.C. § 6033(e)(2). Any such issues are reported on the Form 990.

must include all lobbying and political expenditures as defined in IRC section 162(e), including expenses to influence legislation; participate or intervene in political campaigns; attempt to influence the public with respect to elections, legislative matters, or referendums; and direct communications with covered executive branch officials to influence official actions or positions.⁸ This broad IRC definition includes not just federal and state lobbying but also grassroots lobbying and political activity.

To compile this required information, NEI employs systematic time-reporting and accounting processes to track, monitor, and review expenses and time spent by NEI staff and consultants related to lobbying and political activities. NEI has written policies establishing requirements, guidance, and expectations for employees concerning interactions with Congress, Executive branch officials, and other government agencies, as well as lobbying and political activities and associated recordkeeping and reporting requirements. NEI also maintains compliance programs to integrate internal controls, and organizational oversight and management, with employee commitment to complying with these and other policies. This involves ensuring employees are trained on these policies and performing internal audits of compliance, in addition to independent audits of financial statements.

Using NEI's robust method of monitoring and tracking lobbying and political activities, members are annually provided with the percentage of their dues that are to be used for lobbying-related expenditures. NEI members that use the USofA to satisfy reporting obligations in proceedings before FERC and state commissions can easily identify which amounts are appropriately recorded in Account 426.4 and which in Account 930.2. This well-understood

⁸ 26 U.S.C. § 162(e). Aside from being presumptively non-recoverable, NEI lobbying and political expenditures also are not deductible as a member business expense. *See* 26 U.S.C. § 162(e)(2).

accounting information is available to be scrutinized by the Commission, state commissions, and interested stakeholders.

Neither the Petition nor comments supporting it articulates why the multiple levels of oversight and transparency described above are insufficient and the Commission's longstanding accounting regulations should be altered. Nothing in that record demonstrates that there is a generic problem with how this is being done or that current Commission regulations are not sufficiently transparent especially in light of the extensive information available in the Form 990. Indeed, the Petitioner and other commenters do not establish that the Commission, state commissions, or stakeholders are unable to challenge specific allocations in appropriate circumstances. Accordingly, the Commission should not modify its longstanding regulatory framework in an attempt to alter the outcome of rate recovery proceedings to fit the agenda of certain stakeholders.

C. NEI's activities promote safety, operational and regulatory efficiency, and cost reductions.

As set forth in our comments on the Petition, NEI advances its mission to promote the use and growth of nuclear energy through efficient operations and effective policy by leading numerous efforts that provide significant benefits to customers. Although the full scope of NEI's programs is too voluminous to recount here, we cite the following as representative examples.

Nuclear regulatory, operational, and technical initiatives. NEI is the premier industry association addressing emerging nuclear regulatory, operational, and technical issues. In a multitude of forums, NEI engages with the NRC and other federal regulators, Electricity Subsector Coordinating Council, Institute of Nuclear Power Operations, Electric Power Research Institute, Boiling Water and Pressurized Water Reactor Owners Groups, Nuclear Electric Insurance Limited, and American Nuclear Insurers. NEI plays an important role in shaping

regulatory actions to ensure they are appropriately risk-informed to focus industry and agency resources on the most safety significant issues. Because of these efforts—along with the prudent investments and hard work of experienced operators—the U.S. nuclear industry is performing at the highest levels of safety and reliability in the world. Whether it be day-to-day NRC regulatory and inspection issues, or the major changes considered after the Fukushima Daiichi accident in Japan, NEI helps to ensure any regulatory requirements imposed on utilities yield demonstrable safety benefits and are cost justified. NEI also works to help ensure that federal agencies that impose user fees on the industry are reasonable and reflect the actual agency workload necessary to meet statutory requirements given the high levels of operational performance and safety demonstrated by the U.S. nuclear fleet. NEI also leads the Delivering the Nuclear Promise initiative, which strengthened the industry’s commitment to excellence in safety and reliability by identifying numerous opportunities to increase efficiency at plant sites.⁹

License renewal and innovative technologies. Beginning with the initial rulemakings, NEI was instrumental in the development and implementation of the NRC’s regulations governing license renewal and second license renewal for commercial power reactors. NEI also has been on the cutting edge working on the regulatory framework and commercial efforts for innovative, advanced nuclear technologies. NEI’s work involves extensive engagement to improve the efficiency and effectiveness of safety and environmental reviews, as well as supporting technical reviews and research. NEI also is helping to pave the way for widespread deployment of innovative nuclear technologies such as accident tolerant fuel, digital instrumentation and controls, and advanced nuclear reactors. With nuclear’s reliable, 24/7

⁹ See NEI, Delivering the Nuclear Promise, <https://www.nei.org/resources/delivering-the-nuclear-promise> (last visited Feb. 14, 2022).

generation of electricity, license renewal and advanced nuclear technologies are cost-effective ways to support decarbonization efforts.

Used nuclear fuel. NEI works to ensure efficient and effective regulation of used nuclear fuel, as well as to revitalize the federal used fuel management program. NEI seeks to drive the federal government to meet its statutory and contractual used fuel obligations because utilities and their customers have paid more than \$40 billion into the Nuclear Waste Fund. For example, NEI and the National Association of Regulatory Utility Commissioners sued the Department of Energy (DOE) for the government's failure to begin picking up used fuel in 1998 while contract holders were required to continue paying the one mil-per-kilowatt-hour fee into the Nuclear Waste Fund. The D.C. Circuit ruled that DOE did not have a basis to continue collecting Nuclear Waste Fund fees because it had terminated the statutorily-required program.¹⁰ Since mid-2014, plant owners and their customers have saved *approximately \$750 million per year in fees*, saving the industry and customers more than *\$5 billion* in fees to date.

Conferences and education. NEI conferences, seminars, and other training opportunities provide an opportunity for members and other industry decisionmakers, experts, and policymakers to engage with one another; share lessons learned and best practices; and stay abreast of emerging technical, regulatory, compliance, and economic trends. NEI also provides training for industry professionals to ensure worker knowledge. These opportunities cover numerous subjects beyond those already described, including radiation protection, radiological effluents, regulatory affairs, cyber security, mitigation of beyond design-basis events, access authorization, and fitness-for-duty.

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¹⁰ *Nat'l Ass'n of Regulatory Util. Comm'rs v. DOE*, 736 F.3d 517 (D.C. Cir. 2013).

As the above illustrates, NEI activities have enhanced safety and industry performance, and contributed to efficiency improvements and cost reductions, all of which benefits customers. Each individual utility could of course attempt to do all the things NEI does on its own by, for example, extensively engaging with NRC on significant regulatory matters or bringing its own litigation against DOE to suspend collection of the Nuclear Waste Fund fee. But doing so would significantly increase costs for customers as each utility would have to duplicate regulatory and legal efforts rather than having NEI more efficiently address issues of generic import.

In addition, NEI activities demonstrate why Account 426.4 appropriately contemplates cost recovery for “expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility’s existing or proposed operations.” It would be unreasonable to narrow the scope of Account 426.4 to cover only certain types of appearances before regulatory and other governmental bodies. This would force the Commission well beyond its normal role as economic regulator and place it in the untenable position of needing to decide which expenditures to participate in proceedings in connection with a utility’s operations are appropriate for rate recovery and which are not. Accordingly, the Commission should not narrow Account 426.4’s allowance for expenditures directly related to appearances before governmental bodies in connection with a utility’s operations.

III. COMMUNICATIONS

NEI designates the following individuals for inclusion on the official service list in these proceedings and for receipt of any communications regarding this filing:

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IV. CONCLUSION

For the foregoing reasons, NEI respectfully submits these comments and again requests that the Commission deny the Petition.

Respectfully submitted,

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