

**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 OF NATIONAL GRID USA

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) December 16, 2021 Notice of Inquiry (“NOI”) in this proceeding,¹ National Grid USA respectfully submits these comments on behalf of its subsidiaries that are subject to the Commission’s jurisdiction under the Federal Power Act or the Natural Gas Act (collectively, “National Grid”).²

I. DESCRIPTION OF COMMENTER

National Grid owns and operates electric transmission and distribution facilities in New York and New England, as well as gas distribution networks across the northeastern United States. As such, National Grid is subject to the Commission’s regulatory accounting and financial reporting requirements, including the Uniform System of Accounts (“USofA”) reporting requirements for payments to industry associations.³

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

² National Grid subsidiaries regulated under the Federal Power Act and the Natural Gas Act, and thereby subject to the Commission’s Uniform System of Accounts reporting requirements for payments to industry associations engaged in lobbying or other influence-related activities, include Niagara Mohawk Power Corporation; New England Power Company; New England Electric Transmission Corporation; New England Hydro-Transmission Corporation; New England Hydro-Transmission Electric Company, Inc.; The Narragansett Electric Company; Massachusetts Electric Company; Nantucket Electric Company; and National Grid LNG LLC.

³ See 16 U.S.C. § 825(a) and 15 U.S.C. § 717g (requiring jurisdictional public utilities and natural gas companies, respectively, to maintain a Commission-prescribed system of accounts). See also 18 C.F.R. Parts 101 and 201 (prescribing a uniform system of accounts for public utilities and licensees subject to the provisions of the Federal Power Act and natural gas companies under the Natural Gas Act,

National Grid previously described the considerable benefits associated with utilities' participation in industry associations in response to the Center for Biological Diversity's March 17, 2021 petition in Docket No. RM21-15- 000 ("CBD Petition").⁴ National Grid appreciates the opportunity to now file comments on the NOI initiated in this proceeding in response to the CBD Petition and looks forward to working with the Commission and other stakeholders to ensure that the benefits of industry association membership continue to accrue to not only to industry associations' member utilities, but also to those member utilities' ratepayers.

II. INTRODUCTION AND SUMMARY

The NOI seeks comments on three primary areas: (1) whether additional clarification is necessary regarding the delineation between recoverable and nonrecoverable industry association dues for rate purposes; (2) whether additional transparency or guidance is needed to guarantee the just and reasonable recovery of industry association dues; and (3) whether the Commission should provide further guidance related to the categorization of recoverable and nonrecoverable industry association costs for rate purposes.⁵

The Commission has historically allowed utilities to allocate a portion of their contributions to industry associations to customers, acknowledging that many of the unique benefits of industry association participation would otherwise be inaccessible to those utilities' customers.⁶ The Commission's appropriate allowance for recovery of dues paid to industry

respectively).

⁴ Center for Biological Diversity, Petition for Rulemaking to Amend the Uniform System of Accounts' Treatment of Industry Association Dues, Docket No. RM21-15- 000, at 1 (filed Mar. 17, 2021). The CBD Petition requested changes to the USofA for both public utilities and natural gas companies. *See id.* at 4 n.9.

⁵ *See* NOI at P 2.

⁶ *See, e.g., Delmarva Power & Light Co.*, 58 FERC ¶ 61,169, at 61,509, *order on reh'g*, 58 FERC ¶ 61,282, *further order on reh'g*, 59 FERC ¶ 61,169 (1992) (allowing allocation of industry association contributions to customers to the extent the contributions are for research and development programs to which wholesale customers themselves could not contribute).

associations in instances when the contributions are used for a permissible purpose ensures that customers are not unfairly burdened.⁷ Under Commission precedent, “the portion of [industry association] expenditures that a utility may include, if any, in its cost-of-service depends on the purpose for which the contributions were made.”⁸ When, for instance, the industry associations that represent Commission–regulated entities engage in lobbying activities, the costs associated with those activities are not recoverable in the Commission-regulated rates of the associations’ members. In order to ensure that the expenses paid by utilities to industry associations are separated into the appropriate above the line and below the line accounts⁹ the Commission permits regulated entities “to obtain the necessary information from the industry association to make a proper allocation of the dues payment to the appropriate operating and non-operating expense accounts.”^{r t}

As discussed in greater detail below, membership in industry associations provides significant benefits to the ratepayers of those industry associations’ members. Industry associations offer unique forums for networking and information exchange, providing opportunities for member utilities to communicate and educate themselves as to the challenges facing similarly situated regulated entities. Were the Commission to amend its regulations to

⁷ See *id.* See also *ISO New England Inc.*, 117 FERC ¶ 61,070, at PP 45-46 (2006); *Pac. Gas & Elec. Co.*, 165 FERC ¶ 63,001, at P 769 (2018).

⁸ *Delmarva Power & Light Co.*, 58 FERC ¶ 61,169 at 61,509.

^r See, e.g., *id.* (“[T]hat portion of [industry association] contributions used for lobbying activities may not, under any circumstances, be included in the utility’s cost of service.”).

⁹ The USofA provides instructions concerning which expenses utilities may record in above the line (i.e., recoverable) accounts versus below the line (i.e., nonrecoverable) accounts. As relevant to the expenses discussed in the NOI, Account 930.2 (Miscellaneous and general expenses) covers industry association dues for company memberships and is considered above the line. 18 CFR pt. 101, Account 930.2. In contrast, Account 426.4 (Expenditures for certain civic, political, and related activities) covers costs for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances and is considered below the line. 18 CFR pt. 101, Account 426.4.

^t *ISO New England Inc.*, 117 FERC ¶ 61,070, at P 45 n.63 (citations omitted).

lessen or prohibit recovery of non-lobbying expenses, it would potentially deprive ratepayers of the numerous benefits that accrue from association membership.

III. COMMENTS

A. General Considerations Raised by the NOI

As described in the NOI, the Commission has not previously adopted a bright line rule or specific guidelines that delineate between whether activities intended to inform or influence the public, including industry association dues, should be recorded as above the line or below the line expenses.¹⁰ Rather, the Commission has generally considered the appropriate delineation between above the line and below the line expenses on a case-by case basis and has found that costs incurred for purposes of public outreach and education are “appropriately recoverable from ratepayers, upon sufficient showing that they were undertaken for the benefit of ratepayers.”¹¹

The benefits to ratepayers that accrue from utility membership in industry associations are extensive and, as is true for the energy industry more generally, constantly evolving. These benefits include, but are not limited to, the dissemination of information regarding reliability, physical, and cyber security best practices; sharing of best practices regarding operations and maintenance; coordination of industry efforts to reduce carbon emissions; facilitation of mutual assistance programs to ensure continuity of operations in the event of increasingly frequent severe weather events; and the formation of partnerships to enhance infrastructure reliability.

The CBD Petition specifically highlighted two industry associations—Edison Electric Institute (“EEI”) and the American Gas Association (“AGA”)—both of whom offer compelling examples of the benefits unique to industry association membership. EEI, for example, curates Issue Communities that provide EEI members with an online forum to facilitate the sharing of

¹⁰ NOI at P 5.

¹¹ *ISO New England*, 117 FERC ¶ 61,070 at P 47.

information on a broad range of topics, allowing utilities to better serve their customers. EEI also provides an important coordinating function among utilities to assist in storm response and recovery. This sort of coordinated response has proven invaluable in aftermath of recent severe weather events such as Winter Storm Uri and Hurricane Ida. In addition to enabling regional coordination efforts, EEI played a key role in the creation and the ongoing operations of the Electricity Subsector Coordinating Council, the principal liaison between the federal government and the electric power industry, with the mission of coordinating efforts to prepare for, and respond to, national-level disasters or threats to critical infrastructure.

EEI also hosts conferences, meetings, workshops, and webinars covering critical issues and thereby allowing electric utilities to provide better service to their customers. EEI's educational offerings cover a wide range of essential topics, including occupational safety and health, business diversity, energy management strategies, and accounting. Amidst the ongoing global pandemic, the opportunities that EEI provides for remote learning and engagement have provided a valuable source of continued connection for the regulated community.

Similar benefits come from membership in AGA. AGA provides program "clearinghouse" services in across multiple subject matter areas, enabling its member companies to engage on topics including customer relations, pipeline safety, cybersecurity protection, and workforce training and development. Additionally, AGA identifies industry-leading practices and innovative work techniques that assist members in strengthening their safety programs. AGA has multiple safety oversight committees and numerous safety programs designed to promote the safe operation of the natural gas delivery system. AGA also conducts hundreds of initiatives to improve the safety, efficiency, and productivity of member companies' engineering and operating functions. AGA's energy and analysis group identifies and undertakes energy

analyses and modeling efforts in the areas of gas supply and demand, economics, and the environment, further allowing its members to better serve their customers.

Considering the numerous benefits to ratepayer from utilities' participation in industry associations, the Commission has properly recognized that dues paid to industry associations may be recovered from ratepayers when the contributions are used for a permissible purpose (i.e., to the benefit of ratepayers). Noting this, National Grid offers the following specific responses to questions raised by the Commission in the NOI.

B. Comments Specific to Issues Raised by the NOI

The NOI outlines the Commission's current approach to recovery, reporting, and accounting treatment of industry association dues by member utilities and seeks comments on whether additional clarification is necessary regarding the delineation of recoverable and nonrecoverable industry association dues for rate purposes; whether additional transparency or guidance is needed to guarantee the just and reasonable recovery of industry association dues; and whether the Commission should provide further guidance related to the categorization of recoverable and nonrecoverable industry association costs for rate purposes.¹²

As the Commission's questions concerning delineation of recoverable and nonrecoverable industry association dues are seemingly targeted toward the industry associations themselves, National Grid focuses its comments on the adequacy of the Commission's current approach to transparency regarding industry association dues and the appropriate scope of the Commission's guidance regarding the recoverability of certain industry association costs.

1. Existing Requirements Adequately Ensure Transparency Regarding Industry Association Costs

¹² See NOI at PP 2, 10.

The NOI requests comments on whether increased transparency surrounding industry association costs may improve public knowledge into industry association dues.¹³ In the NOI, the Commission recognized that there are several existing mechanisms whereby stakeholders have the opportunity to review and challenge a utility’s accounting classifications, including through the protocols associated with transmission formula rates.¹⁴ This is the case with National Grid’s transmission-owning subsidiaries in both ISO New England (“ISO-NE”) and the New York Independent System Operator (“NYISO”). The review and challenge procedures contained in these protocols already provide sufficient transparency for interested stakeholders.¹⁵ The existing protocols permit interested parties to request adequately detailed information regarding the inputs to and accounting in support of a transmission owner’s formula rate, and requires the relevant transmission owner to make a good faith effort to respond to such information requests.¹⁶ If a stakeholder objects to one or more inputs, such as costs relating to trade association dues, it can utilize the challenge procedures contained in the protocols. These robust procedures obviate the need for the imposition of additional transparency requirements by the Commission.

To the extent the Commission is inclined to consider specific additional requirements ostensibly aimed at enhancing transparency surrounding the recovery of industry association costs, it should carefully consider and demonstrate how those measures will provide benefits to stakeholders beyond those already provided for under existing requirements, regulations, and regional protocols—including, but not limited to, existing formula rate protocols. Otherwise,

¹³ NOI at P 17.

¹⁴ *Id.* at P 7.

¹⁵ See ISO-NE OATT, Attachment F, Appendix C, Section III; NYISO OATT, Attachment H, Section 14.1.9.4.

¹⁶ *Id.*

such measures will result in redundant and overly burdensome regulatory requirements. For instance, the Commission’s proposal in the NOI to only allow costs that have been publicly disclosed to be recoverable¹⁷ does not materially improve upon the transparency provisions already required under the protocols applicable to the formula rates of National Grid and other transmission owners. Likewise, requiring utilities with formula rates to provide extensive data on trade association dues through workpapers included in their formula rate updates would impose additional costs and burdens upon transmission owners—and by extension, their ratepayers—without any assurances that some or all this information will be of significant interest or value to stakeholders.

Similarly, the Commission does not provide an adequate rationale to support certain limitations impliedly proposed in the NOI. For instance, the NOI requests comments concerning the enactment of requirements specific to certain types of rates (e.g., power sales agreements, reactive power, and sale of electricity),¹⁸ sectors of the energy industry,¹⁹ and associations whose dues per utility exceed a certain threshold.²⁰ Absent a compelling rationale for imposing rules based on these limitations, these appear at best to draw arbitrary distinctions between certain types of trade associations and public utilities, and at worst, to improperly discriminate against specific trade associations and public utilities on the basis of viewpoint preferences. While transparency is a laudable goal, the Commission should be particularly cautious that efforts used in pursuit of this goal are not employed as a means, even inadvertently, to discriminate against industry participants on the basis of their policy positions.

¹⁷ See NOI at P 17, Q13.

¹⁸ *Id.* at P 17, Q 10.

¹⁹ *Id.* at P 17, Q 11.

²⁰ *Id.* at P 17, Q 14.

2. The Existing Commission Regulations and Guidance Related to the Recovery of Costs of Regulatory Interventions and Litigation by Utilities Are Sufficient

The NOI requests comments concerning whether the Commission should provide further guidance related to the definition of certain industry association costs as recoverable or nonrecoverable, and whether the Commission’s policies and regulations should be modified to narrow the category of industry association costs that utilities may appropriately recover from their ratepayers.²¹ However, under this heading, the NOI also queries whether to continue the Commission’s current practice of allowing all costs related to regulatory interventions and litigation by both industry associations *and utilities* to be recorded to above the line accounts.²²

Currently, Account 426.4 of the USofA, a below the line account, provides as an exception to the political advocacy activities utilities are required to report, namely, “expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility’s existing or proposed operations.”²³ These expenses may instead be recorded to above the line accounts.²⁴ The NOI’s inquiry into the recovery of costs necessarily incurred by *utilities* in the course of appearing before regulatory bodies on behalf of themselves and to the benefit of their customers inexplicably expands the scope of the NOI beyond its stated intent to consider the “rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses.”²⁵ Utilities frequently appear before regulators on an individual basis, and these appearances do not necessarily implicate those utilities’ industry associations by extension.

²¹ *Id.* at P 19.

²² *Id.* at P 19, Q 19.

²³ *See* 18 CFR pt. 101, Account 426.4.

²⁴ NOI at P 19, Q 19.

²⁵ *Id.* at P 1.

The Commission’s existing regulations clearly permit utilities to recover the costs of intervention and litigation before regulatory or other governmental bodies in connection with those utilities’ existing or proposed operations.²⁶ The Commission has interpreted this to include appearing before the Commission or other federal and state regulatory agencies in various regulatory proceedings and submitting comments in such proceedings.²⁷ This existing policy is sufficient and sound, as the outcome of such proceedings can and do have significant impacts on a utility's operations. Further, the Commission has recognized that the distinction between costs associated with political advocacy activities, which must be recorded below the line in Account 426.4, and costs necessary for regulatory engagement is often a fact-specific determination best left to the utilities themselves, as the entities most familiar with the day-to-day operations of their respective business entities.²⁸

The Commission does not provide an explanation for expanding the scope of the NOI to examine activities that are fundamental to the functions of regulated public utilities. Further, and contrary to the goal of ratepayer protection espoused elsewhere in the NOI, the Commission does not provide any explanation for how this inquiry benefits customers. Rather, this line of inquiry suggests the possibility of inappropriate Commission oversight of regulated entities’ litigation

²⁶ See 18 CFR pt. 101, Account 426.4.

²⁷ See *Ameren Illinois Co.*, 170 FERC ¶ 61,267, at 62,993 (2020) (“[C]osts of appearances before [the Commission] or other Federal and State regulatory agencies in various regulatory proceedings,’ and ‘[c]osts of submitting comments on this proceeding or other regulatory proceedings’ are categories of expenses that should be recorded in operating expense accounts.”) (citing *Expenditures for Political Purposes - Amendment of Account 426, Other Income Deductions, Uniform System of Accounts, and Report Forms Prescribed for Electric Utilities and Licensees and Natural Gas Companies - FPC Forms Nos. 1 and 2*, Order No. 276, 30 FPC 1539, at 1542-43 (1963)).

²⁸ Order No. 276 at 1542-43. In Order No. 276, the Commission provided a non-exhaustive list of political expenses that should be recorded below the line in Account 426.4, versus the sort of outreach and advocacy-related costs that should be placed in an operating expense account. *Id.* at 1543. See also *Duke Energy Progress, LLC*, 171 FERC ¶ 61,041, 61,414–15 (2020) (expanding the category of expenses that may be recorded above the line to include an even broader array of communications with external and internal stakeholders).

decisions. The Commission should carefully consider the impacts of potential changes to its regulations in this and other areas implicated by the NOI.

IV. CONCLUSION

For the reasons stated herein, National Grid respectfully requests that the Commission take these comments into account as it considers the questions presented in the NOI.

Respectfully submitted:

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