

**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)

**MOTION TO INTERVENE AND COMMENTS
OF DUKE ENERGY**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ Duke Energy Business Services, LLC, on behalf of its franchised public utility affiliates, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (collectively, “Duke Energy”), respectfully submits this Motion to Intervene and Comments regarding the Notice of Inquiry (“NOI”)² of the Federal Energy Regulatory Commission (“FERC” or “Commission”). Many of the NOI’s questions focus on whether the presumptive recoverability of industry association dues should be called into question, and stem from the Center for Biological Diversity’s (“CBD”) Petition for Rulemaking in Docket No. RM21-15 (“CBD Petition”) and its claims that industry associations are primarily engaged in “lobbying” and that revisions to the uniform system of accounts (“USofA”)

¹ 18 C.F.R. §§ 385.212, 214 (2021).

² Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses, Docket No. RM22-5-000 (Dec. 16, 2021).

are needed.³ However, any inquiry along these lines must take into account the numerous benefits that industry associations provide and the prudence of belong to these organizations.

I. MOTION TO INTERVENE

The NOI seeks comments on rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Duke Energy is a member of various trade associations and/or industry groups; therefore, Duke Energy has a direct and substantial interest in this proceeding, and its interests cannot be represented adequately by any other party. For this reason, Duke Energy requests that the Commission grant its intervention in this proceeding.

II. COMMUNICATIONS

Duke Energy requests that the Commission place the following individual on the official service list in this proceeding:

Heather M. Horne
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III. PROCEDURAL BACKGROUND

On March 17, 2021, the CBD Petition was filed requesting that the Commission amend the USofA requirements for payments to industry associations engaged in

³ See NOI at P 16 (citing CBD Petition).

lobbying or other influence-related activities.⁴ According to the Commission, the CBD Petition requested that the Commission amend the USofA to allocate all industry association dues paid by utilities to Account 426.4.⁵ In response to the CBD Petition, Duke Energy filed comments on April 26, 2021 noting that the CBD Petition did not raise any basis for a change in accounting for industry dues, because: (1) lobbying-related dues are already required to be excluded from customers' rates; (2) the CBD Petition lacked any specificity about the changes it was seeking; and (3) the CBD Petition failed to support its arguments that all dues (even non-lobbying-related dues) should be presumptively non-recoverable in rates.

On December 16, 2021, the Commission issued its NOI seeking comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Throughout the NOI, the Commission references the CBD Petition as the basis for the NOI, and points to statements made in the CBD Petition as support for the NOI's questions.⁶ The NOI was published in the *Federal Register* on December 23, 2021.⁷

⁴ NOI at P. 9; 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) ("CBD Petition").

⁵ NOI at P 9; CBD Petition at 8.

⁶ See NOI at P 9, 16.

⁷ The NOI was published in the *Federal Register* on December 23, 2021, hence initial comments on the NOI are due February 22, 2022, and reply comments are due March 23, 2022. *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 86 Fed. Reg. 72958 (Dec. 23, 3021).

IV. COMMENTS

The NOI sets forth 20 questions (not including subparts). A subset of these questions is premised on the CBD Petition's statements that all industry association dues should be "placed in account 426" and flagged as "presumptively non-recoverable."⁸ For example, the NOI states that its Questions 15-20 are aimed at informing whether "modifications" are needed regarding the presumptive recoverability of industry association dues.⁹ Although the NOI clearly is asking questions about recoverability in rates, not a single question in the NOI asks about the benefits of joining industry associations, and/or the prudence demonstrated by utilities in joining such organizations. If the Commission is concerned about evaluating whether costs incurred in the course of business should become presumptively *non*-recoverable, this basic line of inquiry is warranted.

It is reasonable and prudent that businesses as complex as utilities belong to member organizations as a management activity. Moreover, it is not reasonable to assume that all of these organizations' activities constitute lobbying or that because these organizations do engage in some lobbying and political activities, their other activities have no benefit to customers. Industry associations provide valuable resources to their member utilities. For example, the Edison Electric Institute ("EEI") offers training and testing for members' employees; information relating to cybersecurity initiatives, energy

⁸ CBD Petition at 1-2, 4, 15-21.

⁹ NOI at P 16.

efficiency programs, and customer solutions; access to industry data; breaking news on topics such as preparing for the coronavirus; and EEI-sponsored mutual assistance programs that provide a formal, yet flexible, process for electric companies to request support from other electric companies in the event of major outages. The Nuclear Energy Institute (“NEI”), for example, assists in the development of regulatory guidance that is filed with the U.S. Nuclear Regulatory Commission (“NRC”) for approval, and maintains a security access screening database – both of which allow members to more cost effectively comply with NRC regulations. Industry-association-specific benefits are further detailed in the comments submitted in this docket by industry associations, including EEI, NEI, the American Gas Association, and WIRES, all of which show numerous non-lobbying activities, programs, and information sharing. Member companies – and their customers – all benefit from these myriad offerings by, among other things, gaining insights and education; keeping utilities current on industry trends, developments, innovative programs, and emerging safety issues; and avoiding the need to retain additional personnel to keep abreast of the constantly changing energy industry.

In contrast, lobbying costs are treated separately and identified as such using internal mechanisms so that Duke Energy can account for these expenses in a separate FERC account (Account 426.4) from where industry dues settle. EEI, and other similar organizations, are required to clearly identify the portion of dues that relate to these types of lobbying activities, and Duke Energy automatically excludes these amounts from account 930.2 and records them below the line.

V. CONCLUSION

Duke Energy respectfully requests that its motion to intervene be granted, and appreciates the opportunity to have its comments considered by the Commission in this proceeding.

Respectfully submitted,

/s/ Heather M. Horne

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021).

/s/ Marilani Alt
Marilani Alt
FERC Compliance Analyst

February 22, 2022