



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

**[Docket Nos. RM22-5-000; RM21-15-000]**

### **Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses**

#### **Center for Biological Diversity**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Withdrawal of notice of inquiry and termination of proceeding; denial of petition for rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is withdrawing a notice of inquiry that sought comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Additionally, the Commission denies a petition for rulemaking.

**DATES:** The notice of inquiry published on December 23, 2021 (86 FR 72958) is withdrawn as of April 16, 2026.

#### **FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

1. On December 16, 2021, the Commission issued a Notice of Inquiry<sup>1</sup> in Docket No. RM22-5-000, seeking comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. Prior to the Notice of Inquiry, on March 17, 2021, in Docket No. RM21-15-000, the Center for Biological Diversity filed a petition for rulemaking pursuant to Rule 207 of the Commission's Rules of Practice and Procedure<sup>2</sup> and section 553 of the Administrative Procedure Act,<sup>3</sup> 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 (Petition).

2. As discussed below, we are exercising our discretion to withdraw the Notice of Inquiry and to terminate the proceeding in Docket No. RM22-5-000. We also deny the Petition.

### **I. Background**

3. In March 2021, the Center for Biological Diversity filed a petition for rulemaking, requesting that the Commission amend the USofA requirements relating to utility payments to industry associations engaged in lobbying or other influence-related expenses. Specifically, the Center for Biological Diversity requested that the Commission amend the USofA to require the use of Account 426.4 (Expenditures For Certain Civic, Political and Related Activities) for all industry association dues paid by

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<sup>1</sup> *Rate Recovery, Reporting, & Acct. Treatment of Indus. Ass'n Dues & Certain Civic, Pol., & Related Expenses*, 86 FR 72958 (Dec. 23, 2021) 177 FERC ¶ 61,180 (2021) (Notice of Inquiry).

<sup>2</sup> 18 CFR 385.207.

<sup>3</sup> 5 U.S.C. § 553.

utilities.<sup>4</sup> In response to the Petition, the Commission received 35 comments.<sup>5</sup> Some commenters recommended that the Commission remove all industry association dues from rates, whereas others suggested that such a move is unnecessary because industry association dues are properly allocated between recoverable and non-recoverable accounts and changing this approach would be contrary to the fundamental principles of accounting.

4. In the Notice of Inquiry, the Commission stated that it has authority pursuant to the Federal Power Act (FPA) and the Natural Gas Act (NGA) to determine whether a rate is unjust, unreasonable, unduly discriminatory or preferential, and if the Commission determines that the rate is unlawful, to establish a just and reasonable replacement rate.<sup>6</sup> The Commission also stated that it has authority to prescribe and maintain systems of accounts, i.e., the USofA, for public utilities and licensees subject to the FPA, and natural gas companies under the NGA, and the rules and regulations contained therein.<sup>7</sup>

5. In the Notice of Inquiry, the Commission sought comments on a number of questions to examine the Commission's current policies and regulations governing the rate recovery, reporting, and accounting treatment of industry association dues and certain civic political and related expenses. The Commission also sought comments on any potential changes that may be necessary to ensure that such expenditures are

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<sup>4</sup> Petition at 8, 16.

<sup>5</sup> A list of the commenters is provided in the Appendix.

<sup>6</sup> Notice of Inquiry, 177 FERC ¶ 61,180 at P 3 (citing 16 U.S.C. § 824e(a); 15 U.S.C. § 717d(a)).

<sup>7</sup> *Id.* (citing 16 U.S.C. § 825; 15 U.S.C. § 717g; 18 CFR pts. 101, 201).

appropriately accounted for under the USofA and that recovery of these expenditures through Commission jurisdictional rates is just and reasonable.

6. In response to the Notice of Inquiry, the Commission received 93 initial and reply comments.<sup>8</sup> Several commenters asserted that further rulemaking would be redundant because there is enough transparency into industry association dues. Some commenters asserted that utilities rely on itemized invoices to determine what amounts are recoverable or nonrecoverable in rates. Other commenters argued that there is a lack of transparency. One commenter proposed that the Commission provide guidance on a case-by-case basis, rather than through general guidance.

## **II. Discussion**

7. We appreciate the feedback commenters provided in response to the Notice of Inquiry. Based on consideration of the record, we find that the concerns raised in the Notice of Inquiry are better considered on a case-by-case basis, consistent with longstanding Commission practice.

8. Accordingly, we exercise our discretion to withdraw the Notice of Inquiry and terminate the proceeding in Docket No. RM22-5-000. For the same reasons, we also deny the Center for Biological Diversity's Petition. Although we decline to pursue the Notice of Inquiry, we encourage regulated entities to adopt tariff revisions that enhance transparency into the industry association costs included in an entity's rates.

9. We note that in individual cases, evaluating whether industry association costs were appropriately included in rates will continue to be governed by Commission

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<sup>8</sup> A list of the commenters is provided in the Appendix.

regulations,<sup>9</sup> not other regulatory agency regulations.<sup>10</sup> Specifically, expenditures for certain civic, political and related activities are typically not includable in rates and properly recorded in USofA nonoperating Account 426.4. Further, costs recorded in Account 426.4 should include “expenditures for the purpose of influencing public opinion . . . or for the purpose of influencing the decisions of public officials.”<sup>11</sup>

Conversely, costs for public relations activities, under certain parameters, are recordable in operating expense accounts and are recoverable in rates.<sup>12</sup>

10. While there is no brightline test differentiating (1) activities to influence public opinion and policymakers, which must be recorded in nonoperating Account 426.4; versus (2) recoverable public relations activities, which are recorded in operating accounts, the Commission has found that expenditures incurred to influence the opinion of the public that have “little or no benefit to the ratepayers . . . must be borne by stockholders.”<sup>13</sup> In addition, the U.S. Court of Appeals for the District of Columbia Circuit found that Account 426.4 should include utility “expenditures for the purpose of indirectly as well as directly influencing the decisions of public officials.”<sup>14</sup> Specifically,

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<sup>9</sup> Regarding regulated electric utilities, section 141.1 of the Code of Federal Regulations states “[e]ach Major and each Nonoperating (formerly designated as Major) electric utility . . . must prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions as provided in that form.” 18 CFR § 141.1(b)(1)(i). The general instructions to the FERC Form No. 1 require utilities to “[p]repare this report in conformity with the Uniform System of Accounts (18 CFR Part 101) (USofA)” and to “[i]nterpret all accounting words and phrases in accordance with the USofA.” Similar regulations and instructions apply to natural gas and oil pipeline companies.

<sup>10</sup> *Cf.* EEI Initial Comments at 6 (citing the Internal Revenue Code employed by the Internal Revenue Service).

<sup>11</sup> 18 CFR pts. 101, 201, Instructions to Account 426.4.

<sup>12</sup> 18 CFR pts. 101, 201, Instructions to Accounts 923 and 930.1; *see also Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC ¶ 61,218 (1982).

<sup>13</sup> *N. Border Pipeline Co.*, 23 FERC ¶ 61,213, at 61,439 (1983).

<sup>14</sup> *Newman v. FERC*, 27 F.4th 690, 697 (D.C. Cir. 2022).

the Court, in vacating an earlier Commission order, found that costs including those of hired public relations contractors to organize coalitions that would (1) conduct public opinion polls; and (2) run promotional advertisements to persuade state officials that were “persuasive rather than merely informative” should be in Account 426.4.<sup>15</sup> In addressing whether certain industry association costs are includable in rates in any future individual proceeding, the Commission will continue to rely on its regulations and the precedent interpreting those regulations.

The Commission orders:

(A) The Notice of Inquiry is hereby withdrawn, and Docket No. RM22-5-000 is hereby terminated, as discussed in the body of this order.

(B) The Petition in Docket No. RM21-15-000 is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner LaCerte is not participating.

Issued April 16, 2026.

**Carlos D. Clay,**

*Deputy Secretary.*

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<sup>15</sup> *Id.* at 694, 697.

**Note: The following appendix will not appear in the Code of Federal Regulations.**

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