

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

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

**REPLY COMMENTS OF THE LOUISIANA PUBLIC SERVICE COMMISSION ON
RATE RECOVERY, REPORTING AND ACCOUNTING OF INDUSTRY
ASSOCIATION DUES AND CIVIC, POLITICAL AND RELATED EXPENSES**

The Louisiana Public Service Commission (the "Louisiana Commission" or "LPSC") submits these brief Reply Comments to respond to some of the points raised in the Initial Comments filed by various participants. The Louisiana Commission encourages the FERC to follow up on its inquiry with appropriate clarifications to ensure that industry association dues to support lobbying and advocacy efforts that benefit utility shareholders are not recoverable from ratepayers absent a utility demonstration that such dues are necessary for the provision of safe, reliable service at lowest reasonable cost. The FERC should not be dissuaded from this endeavor by the self-serving arguments of those entities that claim to represent the public interest, but do not. The Louisiana Commission and other regulators are invested with the duty of representing the interests of the ratepayers they serve. Those interests often diverge from those of industry associations, like the Edison Electric Institute ("EEI"). As EEI points out, it "represents all shareholder- owned electric utilities in the United States, regardless of how they are structured." [EEI Initial Comments at 1]. Shareholders are interested in maximizing profits, while the ratepaying public is

concerned with reliable service at the lowest reasonable cost. The public interest would be better served by recording the industry association dues below the line and requiring utilities to make an affirmative showing that such costs were expended to benefit the public before allowing them in rates.

Several commenters argue that many of the changes contemplated in the Notice of Inquiry would discourage participation in regulatory proceedings and in the development of new laws and regulations. [*See, e.g.*, EEI Initial Comments at 2]. But this is not about discouraging participation or in any way limiting it; it is about who pays for such participation. If the advocacy is to benefit utility shareholders, then it should be paid for by utility shareholders. The best way to achieve this would be to require industry association dues to be recorded below the line unless the utility shows that the costs were necessary to improve the provision of service at the lowest reasonable cost. Shareholders can do their own cost-benefit analysis to decide whether advocacy benefitting them is worth funding. If they decide not to fund it, then they should accept the consequences of that decision, not shift costs they decline to pay to ratepayers.

EEI's comments make clear that, while they may be complying with Internal Revenue Service definitions and reporting requirements for lobbying, that is not sufficient to identify costs that should appropriately be borne by shareholders. As detailed in the Louisiana Commission's Initial Comments, EEI spends a great deal of its time advocating in regulatory proceedings for positions that support shareholder profits to the detriment of electric consumers, for instance funding significant research, whitepapers and testimony to

support overly generous utility returns on equity. Those costs should be borne by shareholders, not ratepayers.

Even as to those costs that industry associations like EEI explicitly identify as lobbying in their invoices, utilities often cannot manage even to record them below the line and exclude them from rates. In its Initial Comments, the Louisiana Commission detailed its experience in FERC Docket No. EL20-72 uncovering the erroneous recordation of lobbying expenses embedded in industry association dues in Account 930.2, an above-the-line account that was included in rates charged under the FERC-jurisdictional Grand Gulf Unit Power Sales Agreement ("UPSA"). [*See* LPSC Initial Comments at 11-12]. Similar errors by other Entergy affiliates have been discovered in audits by the FERC Office of Enforcement. [*See* LPSC Initial Comments at 13-15]. In Docket No. EL20-72, the error in the UPSA would never have been discovered if the LPSC and other retail regulators had not filed a complaint and engaged in extensive contested discovery.

Given these repeated errors, which would remain buried if not diligently pursued at great cost to consumers, utilities should not be given the benefit of the doubt as to these costs. Rather, they should be recorded below the line and only moved above the line and included in rates if the utility demonstrates it is appropriate to do so. Utilities should not enjoy a presumption of recoverability, as they currently do. That presumption has allowed them to unjustifiably recover many expenses that they should not be recovering from ratepayers.

In Docket No. EL20-72, the Louisiana Commission asked for the EEI invoices of Entergy's System Energy Resources, Inc. ("SERI"). As explained in the

Louisiana Commission's Initial Comments, those invoices were produced under a "Confidential and Privileged" designation and, thus, the Louisiana Commission was precluded from discussing the details of those invoices. At the Louisiana Commission's request, SERI has now removed the confidential designation on those invoices and informed that they may be treated as public information. The Louisiana Commission would like to publicly confirm that those invoices contain virtually no detail regarding the costs that are included in the dues. The invoices designate a small percentage of "membership dues" as "influencing legislation," typically about 13 percent, but do not provide the basis for that allocation, or in any way explain what costs are included in that designation and what costs are not. The invoices allocate a higher portion of a relatively small charge for "industry issues" as "influencing legislation" but does not provide any details as to what is paid for out of those dues.

The report that EEI attaches to its Initial Comments provides broad categories of budget items, but no information about what is contained in those broad categories or the methodology for categorizing expenditures. For instance, "Grid Investment and Modernization" may include the costs of advocating high returns on equity for transmission-owning utilities. EEI often argues that higher ROEs are necessary to attract investment in transmission, a claim that the Louisiana Commission and other consumer-oriented entities dispute. "Finance and taxes" could also include the costs of developing and advocating for tax and finance strategies that maximize shareholder profits at consumer expense. Other EEI budget categories like "Clean Energy" and "Grid Security & Reliability" could contain the costs of supporting agendas with which the Louisiana

Commission and other consumer advocates or regulators disagree or from which ratepayers do not benefit. These marketing buzzwords are not a replacement for concrete information that would demonstrate that the expenditures are necessary for safe, reliable service at lowest reasonable cost.

EEI cites its work on storm restoration and cyber threats as examples of services that "benefit electricity consumers." [EEI Initial Comments at 13-14]. The Louisiana Commission agrees that these issues are critically important to electric consumers, and it is possible that the cost of industry association activities relating to these issues is legitimately recoverable through rates paid by consumers. But the burden should be on the rate-supported utilities, and by extension on the dues-collecting industry associations, to demonstrate which of its costs provide these services and for what specifically those costs are incurred. It is not sufficient for the industry association to affix a general label on a segment of its budget. This does not provide the transparency and reviewability that ratepayers need and deserve.

EEI also points to the fact that state regulators govern the recovery of the majority of industry association dues through retail rate regulation as a reason that the FERC should not act in this matter. [EEI Initial Comments at 4]. But state regulators like the Louisiana Commission are subject to FERC governance when it comes to wholesale rates. Louisiana ratepayers are forced to buy power and pay rates under the UPSA tariff, and cannot disallow any of those costs at retail, under the doctrine of federal preemption. *Entergy Louisiana, Inc. v. Louisiana Public Service Commission*, 539 U.S. 39, 41-50 (2003); *Mississippi Power & Light Co. v. Mississippi ex rel Moore*, 487 U.S. 354 (1988).

Thus, the FERC has an obligation to ensure that the wholesale rates under its jurisdiction are just and reasonable in all respects.

The Louisiana Commission must seek any rate relief for wholesale rates, like those charged under the UPSA, from the FERC, which it has done in several complaints. [See, e.g., FERC Docket Nos. EL18-152, EL20-72 and EL21-56]. The complaint, discovery and hearing process is expensive and time consuming. A rule requiring industry association dues to be recorded below the line in the first instance would help to streamline the process with respect to those costs. Contrary to EEI's assertion, FERC action in this Docket would not be a hindrance to state regulation, but rather would enhance and help it to achieve just and reasonable rates for end-use customers.

Kathryn Bowman
Executive Counsel
Louisiana Public Service Commission
Galvez Building – 12th Floor
602 N. Fifth Street
Baton Rouge, Louisiana 70802
Telephone: (225) 342-9888

Respectfully submitted,



Michael R. Fontham
Dana M. Shelton
Justin A. Swaim
Of
STONE PIGMAN WALTHER WITTMANN
L.L.C.
909 Poydras Street, Suite 3150
New Orleans, Louisiana 70112-4042
Telephone: (504) 581-3200

Attorneys for the Louisiana Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Reply Comments of the Louisiana Public Service Commission on Rate Recovery, Reporting and Accounting of Industry Association Dues and Civic, Political and Related Expenses" has been served on the official service list compiled by the Secretary in this proceeding by e-mail this 23rd day of March, 2022.



Dana M. Shelton