

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Center for Biological Diversity

)

Docket No. RM21-15-000

**MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME
AND COMMENTS OF
MARYLAND OFFICE OF PEOPLE’S COUNSEL**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. §§385.212 and 385.214, the Maryland Office of People’s Counsel (“MPC”) requests leave to intervene in the above-captioned proceeding. In support of this motion, MPC states the following:

MOTION FOR LEAVE TO INTERVENE

The name, address, telephone, facsimile and e-mail address of the Maryland Office of People’s Counsel’s designated representatives for receipt of service in this proceeding are:

William F. Fields
Deputy People’s Counsel
Maryland Office of People’s Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150
(410) 333-3616 (facsimile)
William.fields@maryland.gov (e-mail)

Niki Wiggins
Assistant People's Counsel
Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8152
Irene.wiggins@maryland.gov (e-mail)

On March 17, 2021, Center for Biological Diversity petitioned FERC to amend the Uniform Systems of Accounts (USOA) requirements for payments by investor-owned utilities to industry trade groups that engage in lobbying and political advocacy. The requested change would require utilities to account for trade group dues in USOA Account 462 rather than Account 930.2. This would make such funds presumptively non-recoverable in customer rates, as opposed to presumptively recoverable as they are now. Such a change would properly place the burden on the utility to show they are entitled to recover any dues.

The proposed change in accounting practice will impact transmission rates paid by Maryland consumers. The specific interests of Maryland residential consumers are not adequately represented by other parties in this matter, and MPC's intervention is necessary to protect these interests.

Rule 214(d) provides the factors the Commission considers in deciding whether to grant a motion for late intervention: "(i) The movant had good cause for failing to file the motion within the time prescribed; (ii) Any disruption of the proceeding might result from permitting intervention; (iii) The movant's interest is not adequately represented by other parties in the proceeding; (iv) Any prejudice to, or additional burdens upon, the

existing parties might result from permitting the intervention; and (v) The motion conforms to the requirements of paragraph (b) of this section.” Consideration of those factors, as described below, shows that MPC’s request for late intervention should be granted.

So far in this case there has only been a complaint filed, an answer, and comments. The matter is pending before the Commission. MPC agrees to take the record of this proceeding as it exists at the time of this motion. No procedural disruptions or prejudice to any parties will occur if FERC grants MPC’s request for late intervention in this case.

MPC represents the interests of residential customers in Maryland who are served by investor-owned utilities. Any changes to the USOA requirements—or any decision not to change the requirements—for Maryland’s utilities that result from this case impacts the rates Maryland customers pay.

MPC has good cause to file this late intervention. MPC only recently began investigating the extent to which ratepayers in Maryland may have been unfairly contributing to lobbying costs and wrongdoing committed by FirstEnergy in Ohio, whose wholly-owned subsidiary Potomac Edison operates in Maryland.¹ It was through this investigation, prompted by the FirstEnergy bribery scandal, that we became aware of the importance of the issue presently before FERC to Maryland ratepayers. MPC plays an important role in ensuring that Maryland ratepayers do not pay for any political activity

¹ See Order Granting, In Part, Petition Requesting Investigation, Md. P.S.C. Order 89888 at 7 (July 26, 2021). The referenced bribery scandal involving FirstEdison is detailed in the Comments below.

that is meant to solely benefit utilities and their shareholders, including political activity conducted on behalf of utilities by trade associations.

Therefore, good cause exists to grant MPC out-of-time intervention in this proceeding and accept the following comments.

COMMENTS

MPC represents the interests of Maryland residential utility consumers in state and federal regulatory and legislative proceedings. Maryland consumers are entitled to fair and transparent utility accounting practices. **MPC writes to urge FERC to grant the Center for Biological Diversity's petition for a rulemaking to amend the Uniform System of Accounts so that utility trade associations due are presumptively non-recoverable.**

Utilities operating in Maryland use FERC's USOA to track costs and expenses. FERC currently requires that certain political and charitable spending be classified below-the-line so that it is presumptively not recoverable in rates charged to consumers. But FERC allows utilities to place industry trade association dues above-the-line, where they are presumptively rate recoverable. On their 2020 FERC Form 1 filings, Maryland utilities reported more than \$1.25 million for industry association dues. As the principal advocate for Maryland residential customers, we are unable to substantiate that these costs are used for the benefit of Maryland customers.

Utility industry trade associations engage in substantial advocacy activity on behalf of their members.² As documented in the petition, a portion of this advocacy brings no benefit to customers and, in fact, may be contrary to ratepayer interests. For example, the Edison Electric Institute (EEI), the leading industry association for electric utilities, spends millions of dollars yearly on political and advocacy activities, including advertising, training, and funding political organizations.³

Trade association advocacy costs should not be recovered from ratepayers. The USOA's presumptive recovery of industry group dues above-the-line, however, allows utilities to recover advocacy expenses and to outsource political spending in ways that conceal how utilities are using ratepayer funds. Consistent with the USOA's requirement that utilities classify their own political spending below-the-line, trade group dues also should be below-the-line, subject to a rebuttal presumption that they are not recoverable.

Currently, once dues are paid to an industry trade group, their use is obscured from regulatory authorities. The public bears the burden of rebutting the presumption that such costs are recoverable, because trade groups are not subject to stringent reporting requirements.⁴ The current USOA method requires ratepayers and their advocates to

² See generally Anderson et al., *Paying for Utility Politics: How utility ratepayers are forced to fund the Edison Electric Institute and other political organizations*, Energy and Policy Institute (2017) at 10.

³ *Client Profile: Edison Electric Institute*, Center for Responsive Politics (2019), <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000000297> (last visited Aug. 26, 2021).

⁴ The petitioner documents examples of trade group obfuscation of spending details in its answer to EEI's comments. See Center for Biological Diversity, Answer of Center for Biological Diversity, Exhibit J (May 11, 2021), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210511-5113&optimized=false.

challenge the inclusion of industry trade group dues in consumer rates. But trade groups effectively conceal the cost of their advocacy work by not tracking it, as allowed by FERC’s above-the-line treatment. This framework violates the Federal Power Act and the Natural Gas Act’s requirements that place the burden of proof in rate proceedings on the *utility*—not the consumer—for demonstrating an entitlement to recover expenses from ratepayers.⁵

If adopted, the petition appropriately would move to utilities the burden of showing they are entitled to recover any dues. Because trade groups have a clear financial interest in the success of their dues-paying members, utilities are better positioned than ratepayers to compel their trade groups to disclose the details of their spending for the purpose of reporting to regulatory agencies. The petition, if adopted, would greatly enhance transparency while still giving utilities the opportunity to recover any part of the dues used to serve customers.

The issue of transparency is especially salient in light of the recent scandal involving FirstEnergy, the Ohio-based holding company of Maryland utility Potomac Edison.⁶ The Maryland Public Service Commission recently granted our petition for an investigation into FirstEnergy’s use of ratepayer funds to pay for bribes, lobbying, or

⁵ 16 U.S.C. § 824d(e) (“At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility.”); 15 U.S. Code § 717c(e) (same).

⁶ FirstEnergy recently agreed to pay a substantial penalty in a deferred prosecution agreement with the Justice Department for its role in a bribery scheme involving lobbyists and political officials. *See* Jaclyn Diaz, *An Energy Company Behind A Major Bribery Scandal In Ohio Will Pay A \$230 Million Fine*, NPR (July 23, 2021), <https://www.npr.org/2021/07/23/1019567905/an-energy-company-behind-a-major-bribery-scandal-in-ohio-will-pay-a-230-million->.

other costs associated with FirstEnergy’s wrongdoing.⁷ MPC thus adds its support to the sentiment already expressed in comments to FERC by Office of the Ohio Consumers’ Counsel: in order to prevent further incursions on the interests of utility consumers, accounting standards for utility political spending across the board must be more transparent.⁸ Granting Center for Biological Diversity’s petition is a meaningful step toward transparency.

We are also concerned that industry trade group spending by utilities violates the First Amendment rights of Maryland’s ratepayers under the Supreme Court’s ruling in *Janus v. AFSCME, Council 31*.⁹ Some portion of the advocacy activities engaged in by utility industry trade groups—like EEI—is controversial and in contradiction to scientific conclusions affecting the welfare of Maryland’s citizens.¹⁰ The *Janus* holding—that employees may not be compelled to pay dues to unions whose political speech they do not agree with—should compel FERC to revise its accounting standards to insulate captive ratepayers from subsidizing controversial speech.¹¹

⁷ Order Granting, In Part, Petition Requesting Investigation, Md. P.S.C. Order 89888 at 7 (July 26, 2021).

⁸ Office of the Ohio Consumers’ Counsel, Comments on Notice of Proposed Rulemaking to Protect Consumers From Subsidizing Utility Political and Advertising Activity (April 26, 2021), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210426-5313&optimized=false.

⁹ *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

¹⁰ See e.g. Kathy Mulvey & Seth Shulman, *The Climate Deception Dossiers: Internal Fossil Fuel Industry Memos Reveal Decades of Corporate Disinformation*, Union of Concerned Scientists, at 11 (2015), <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>.

¹¹ *Janus*, 138 S. Ct. at 2464 (stating that “[b]ecause the compelled subsidization of private speech seriously impinges on First Amendment rights, it cannot be casually allowed.”).

The petition presents FERC with a critical opportunity to ensure consumers only pay costs that bring them benefits and to avoid statutory and constitutional issues arising from the current treatment of trade association dues.

CONCLUSION

Wherefore, MPC respectfully requests that it be permitted to intervene in this proceeding, and that FERC grant the Center for Biological Diversity's petition requesting that industry trade group dues be recorded in account 462 rather account 930.2.

Respectfully submitted,

David S. Lapp
People's Counsel
Maryland Office of People's Counsel

/s/ William F. Fields
William F. Fields
Deputy People's Counsel
Maryland Office of People's Counsel
(410) 767-8150
William.fields@maryland.gov

Irene (Niki) Wiggins
Assistant People's Counsel
6 Saint Paul Street, Suite 2102
Baltimore, MD 21202
(410) 767-8152
Irene.wiggins@maryland.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 2nd day of September, 2021.

/s/ Irene Wiggins

Irene (Niki) Wiggins

Assistant People's Counsel

Maryland Office of the People's Counsel

6 Saint Paul Street, Suite 2102

Baltimore, MD 21202

(410) 767-8152

Irene.wiggins@maryland.gov