UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Center for Biological Diversity	)	Docket No. RM21-15-000
AND		
Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses	))))	Docket No. RM22-5-000

REQUEST FOR REHEARING BY CENTER FOR BIOLOGICAL DIVERSITY

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I. INTRODUCTION

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2018), and Rule 713 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713, the Center for Biological Diversity ("Center") respectfully seeks rehearing of the Commission's April 16, 2026 decision denying the Center's March 17, 2021 Petition for Rulemaking ("2021 Petition") and withdrawing the Commission's 2021 Notice of Inquiry ("NOI") ("2026 Petition Denial Order").[1]

As discussed below, the 2021 Petition offered the Commission an opportunity to rein in the pernicious practice of for-profit utility companies forcing their customers to pay for activities that bring those companies more profits rather than serving the interests of their customers—and the public interest generally. Federal and state officials, private companies, and consumer advocates across the country participated in these Dockets to urge the Commission to take action to stem these abuses and save consumers money.

Especially in light of rapidly rising utility rates and the energy affordability crisis, everyday Americans deserve to have utility regulators closely scrutinize rate recovery requests to guarantee that every penny taken from consumers' pocketbooks and placed in utility coffers benefits the consumer as a legitimate cost-of-service. Where, instead, the utility is spending dollars for activities that principally benefit their own record profits—often at the expense of their customers—these expenses must not be recoverable.

Unfortunately, by ignoring the overwhelming Record the Commission has assembled in these two Dockets and denying the Center's straightforward and commonsense Petition to

[1] Withdrawal of Notice of Inquiry and Order Denying Petition for Rulemaking (Apr. 16, 2026), published at 76 Fed. Reg. 21,298 (Apr. 21, 2026).

protect consumers from compelled subsidization of utility influence activities, the Commission is betraying this basic regulatory obligation and exacerbating the affordability crisis. Making matters worse, the Commission provided no coherent rationale for this decision.

The Center's 2021 Petition detailed the systemic problem of utilities charging their customers for trade association dues, even though these dues are frequently used to fund lobbying and other influence activities that benefit the utilities themselves rather than their customers. To address this problem, the Center formally requested the Commission to amend its Uniform System of Accounts ("USofA") regulations to move "Industry association dues for company memberships" from Account 930.2 (where they are is presumptively recoverable) to Account 426. This simple accounting change would have a critical effect on saving ratepayer dollars, by making these millions of dollars in dues payments presumptively *non*-recoverable. This would, for the first time, require that in individual cases utility companies and their trade groups either forego rate recovery for political influence activities or, at minimum, affirmatively demonstrate how these funds are being used to benefit ratepayers. The Petitions also explained how compelling ratepayers to pay for speech they do not support is contrary to the First Amendment. *E.g.*, *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, (2018).

In response to the 2021 Petition, and the Commission's subsequent Notice of Inquiry ("NOI"), 86 Fed. Reg. 72,958 (2022), the Commission received scores of substantive comments from numerous state attorneys general, large energy users, state utility commissions, and dozens of consumer and other advocates explaining how the existing system—where these issues are considered on a case-by-case basis with dues presumptively recoverable—fails to ensure just and reasonable rates by obscuring how these funds are used and thereby inviting abuses. Commenters

explained in great detail, and with numerous concrete examples, the basic problem with requiring Intervenors to affirmatively *challenge* this rate recovery in individual cases (because the dues are presumptively recoverable), rather than the utilities themselves being required to affirmatively *justify* this expense (as they would if the dues became presumptively non-recoverable), because the existing system allows utilities and their trade groups to hide how this money is being spent. Commenters also explained how the current system infringes on ratepayers' First Amendment right.

Now, after hearing extensively on precisely why relying on the current USofA in individual cases has proven entirely inadequate to address these problems, the Commission has announced, without any explanation at all and contrary to this overwhelming Record, that no action should be taken at all, and it has issued an Order denying the Rulemaking Petition and withdrawing the NOI. 91 Fed. Reg. at 21,287.

However, the Commission's purported rationale—*i.e.* that the issues raised in the Petition should be considered "on a case-by-case basis," *id.*, is a non-*sequitur* to the relief requested in the Petition. Even if the Commission were to grant the Petition and changed the USofA, these issues would continue to be resolved on a case-by-case basis.

However, if the Petition were granted, in those individual cases, the burden would appropriately shift to the utilities and their trade associations—who have all the requisite information—to demonstrate why these charges should be billed to customers. The Commission's Order does not at all explain why that proposed approach would not better serve the ratepayers, whose interests the Commission has a mandate to protect.

Moreover, the 2026 Petition Denial Order's suggestion that it is somehow sufficient to "encourage regulated utilities" to take voluntary action to protect ratepayers from inappropriate

charges ignores all the reasons the Record shows that utilities do not believe any action is necessary. *Id.*

Because the Commission's decision to deny the Rulemaking Petition and withdraw the NOI is arbitrary and capricious and contrary to the Record, the Center respectfully seeks rehearing. *E.g., Flyers Rights Educ. Fund, Inc. v. FAA*, 864 F.3d 738 (D.C. Cir. 2017).

II. STATEMENT OF ISSUES

A. Although an agency's denial of a Rulemaking Petition receives due deference, the agency must still engage with the Petition and comments and provide a reasoned explanation for its decision. *Id* at 738 (granting petition for review over denial of rulemaking petition where agency had "given no reasoned explanation" for its decision). The Commission's cursory denial of the Center's Rulemaking Petition and withdrawal of the NOI here fails to comply with the agency's basic Administrative Procedure Act ("APA") obligation for a reasonable explanation and warrants rehearing. *Id.*; *Antero Res. Corp. v. FERC*, 156 F.4th 654, 660 (D.C. Cir. 2025) (reiterating FERC's APA obligation to provide "a rational connection between the facts found and the choice made").

III. BACKGROUND

A. The Uniform System Of Accounts And FERC's Long-Standing Accounting Treatment of Trade Association Dues

It is well-established that while utilities may recover certain expenses reasonably related to the cost of providing service, as well as a reasonable rate of return, other expenses must be borne by the utility itself. The overriding objective of the ratemaking process is to ensure that utility rates are just and reasonable.[2]

[2] *E.g.*, 16 U.S.C. § 824d(a).

To satisfy this objective, in evaluating a utility's request for rate recovery, regulators scrutinize those requests to determine which expenses are appropriately charged to ratepayers as "above-the-line" recoverable expenses, and which should be borne by the utility itself "below-the-line." FERC created the USofA to provide useful information for this process.[3]

Under the USofA, industry association dues have long been recorded in an above-the-line (*i.e.*, presumptively recoverable) account – Account 930.2[4]:

> **930.2 Miscellaneous general expenses.**
>
> This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.
>
> ITEMS
>
> 1. Miscellaneous labor not elsewhere provided for Expenses.
> 2. *Industry association dues for company memberships.*

The USofA also contains below-the-line (*i.e.,* presumptively non-recoverable) accounts, including certain "miscellaneous expense" items recorded in Account 426. Of particular relevance here is Account 426.4:[5]

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[3] APPA, *Public Utility Accounting: A Public Power System's Introduction to the Federal Energy Regulatory Commission Uniform System of Accounts*, American Public Power Association (2012), at 17.

[4] 18 C.F.R. Part 101, § 930.2; *see also* 18 C.F.R. Part 201, § 930.2.

[5] 18 C.F.R. Part 101, § 426.4; 18 C.F.R. Part 201, § 426.4.

426.4 Expenditures for certain civic, political and related activities.

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

Utilities under FERC jurisdiction provide this information in their Form 1 submissions, but the USofA is also followed by federal agencies like the Tennessee Valley Authority ("TVA"),[6] electric utility cooperatives,[7] and numerous states.[8]

FERC has long recognized that ratepayers should not be forced to pay for a utility's *political* activities. This includes the political activities of utility industry associations. Thus, for example, FERC has explained that utility payments for Edison Electric Institute ("EEI") lobbying activities "may not, under any circumstances, be included in the utility's cost of service."[9]

To address this issue in the USofA, utilities are expected to put the portion of their dues that fund trade group lobbying into Account 426.4. However, as discussed below, the trade associations themselves decide how to make this allocation, and they do no share their method

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6 *See* 16 U.S.C. § 831m (requiring TVA to follow the USofA).

7 7 C.F.R. Subpart B (applying USofA to cooperatives).

8 *See, e.g.*, Ariz. Admin. Code §§ 14-2-212, 14-2-312 (2021) (Arizona); Ga. Code Ann. § 46-2-20(f) (2020) and Ga. Comp. R. & Regs. 515-3-1-.10(a) (Georgia); Idaho Admin. Code. r. 31.12.01.101 (2020) (Idaho); 220 Ill. Comp. Stat. Ann. 5/5-101 (LexisNexis 2020) and Ill. Admin Code tit. 83, § 415.10 (2021) (Illinois); Mo. Code Regs. Ann. tit. 20 § 4240-20.030 (2021) (Missouri); Mont. Admin. R. 38-5-110 (2021) (Montana); Nev. Rev. Stat. Ann. § 703.191 (LexisNexis 2020) (Nevada); N.M. Code R. § 17.3.510.10 (2021) (New Mexico); N.Y. Comp. Codes R. & Regs. tit. 16, § 167 (2021) (New York). As the 5th Circuit has explained, the USofA is important for state regulators. *Southwestern Elec. Power Co. v. FPC*, 304 F.2d 29, 38 (5th Cir. 1962).

9 *Delmarva Power & Light Co*., 58 F.E.R.C. P61,169, 61,509 (1992) (emphasis added); *Pacific Gas and Electric Company*, 165 F.E.R.C. P63,001 (Oct. 1, 2018) (discussing division between recoverable and unrecoverable EEI expenses).

for doing so with either their member utilities, regulators, or Intervenors seeking to protect consumers from inappropriate charges.[10]

B. The Center's 2021 Rulemaking Petition And Supporting Comments

On March 17, 2021, the Center submitted to FERC a Petition for Rulemaking To Amend the Uniform System of Accounts' Treatment of Industry Association Dues ("2021 Petition").[11] Noting how the Commission has stressed the importance of the USofA to provide "consistent, transparent, and decision-useful accounting information," the Petition explained how the Commission itself has also recognized that it has instead failed to provide a "clearly delineated" line between the kinds of influence-related expenses that belong in a below-the-line (*i.e.*, non-recoverable) USofA account rather than an above-the-line (*i.e.*, recoverable) account. *Id.* at 1-2.

As a result, as the Petition details, there are myriad influence-related costs that ratepayers are routinely forced to pay for through trade association dues, even though those costs benefit these for-profit companies rather than their customers. *Id.* at 9-11 and Exhibit B. The Petition specifically highlighted the EEI and the American Gas Association ("AGA"), two enormous trade associations that engage in a slew of influence-related activities that ratepayers fund, including, *e.g.*, routinely advocating for weakening health standards; sowing doubt about climate change; obstructing energy competition; and attacking protections for wildlife and protected

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[10] In response to this proceeding, EEI announced the launch of a new "Lobbying and Expenditures Report" it claimed would make its spending more transparent, and promised this Report would be "updated annually." EEI Comments, RM22-5 (Feb. 2, 2022) at 3 and Appendix A. However, now that the NOI has been withdrawn, it appears that EEI has ceased providing even that information. *See* https://www.eei.org/-/media/Project/EEI/Documents/About/Lobby_Disclosure.pdf (the link previously provided by EEI, which now says "th[is] page . . . has come unplugged").

This cynical move not only further demonstrates why Commission action is necessary here, it flies in the fact of recommendations from utility companies in these dockets who supported having trade associations at least provide "additional information on their websites regarding their lobbying activities." Comments of Indicated SPP Transmission Owners, RM22-5 (Feb. 22, 2022) at 1.

[11] *See* RM21-15.

species. *Id.* The Petition also included numerous other examples of political advocacy by other trade associations funded by ratepayers. *Id.* at Exhibit B.

To address these concerns, the Petition requested that the Commission amend the USofA to move those dues from Account 930.2, where they are presumptively recoverable, to Account 426, where utilities would for the first time be required to justify these expenses before passing them along to ratepayers. *Id.* at 2-3. As FERC has explained, putting expenses in Account 426 serves to "highlight them for scrutiny in rate proceedings and require the utility to justify their recovery." *Id.* at 8 (citing FERC decisions).

The Petition presented two separate bases for this rulemaking change.

First, the Petition explained how this change will provide the transparency necessary to protect ratepayers from expenses that are not part of just and reasonable rates. *Id.* at 15-21. The Petition provided numerous examples where the existing system, in which trade association dues is considered to be presumptively recoverable in each individual case, has proven inadequate, and it detailed why the proposed approach would be more consistent with FERC's statutory duty to ensure "the burden of proof" remains with utilities to justify rate recovery. *Id.* at 16. The Petition also explained the importance of this accounting change not just for proceedings before FERC, but also for other federal and state agencies that rely on the FERC USofA for their own accounting practices. *Id.* at 8-9.

Second, the Petition explained that ratepayers have a First Amendment right to be protected from compelled payments for controversial advocacy with which they may not agree. *Id.* at 22-27. The Petition noted that the Supreme Court has long emphasized how utilities may not charge ratepayers for advocacy over "controversial issues of public policy," and how the Court's more recent First Amendment cases demonstrate that, since there is no dispute that these

trade associations do in fact engage in non-recoverable lobbying, the Commission must take action to protect ratepayers from the risks of being forced to subsidize third party political influence activities. *Id.* (citing cases).

In response to a Commission Notice[12], numerous commenters—including, *e.g.*, states attorney general—filed comments supporting the Petition. These comments explained the insufficiency of having trade association dues be presumptively recoverable in case-by-case adjudications, and how amending the USofA would protect ratepayers by ensuring they are no longer paying for advocacy and activities that are not a reasonable cost-of-service.[13] For their part, the utilities and their trade associations uniformly urged the Commission to reject the Petition and take no action at all.[14]

C. The Commission's Notice of Inquiry And Supporting Comments

In December 2021, the Commission issued its NOI on this issue.[15] The NOI summarized the concerns about the proper accounting treatment of trade association dues and related expenses, and it sought information from utilities and their trade associations concerning how they classify, record, and recover these expenses under existing rules. The NOI also sought comments from the public regarding limitations on the existing approach to this issue, through which dues are presumptively recoverable, and which reforms to consider to address these limitations. *Id.* Collectively, the NOI set forth twenty separate questions—many with numerous sub-parts—to allow the Commission to compile a fulsome Record on these issues. *Id.*

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12 86 Fed. Reg. 17342 (Apr. 2, 2021).

13 *See* Comments in RM21-15.

14 *Id.*

15 86 Fed. Reg. 72958 (Dec. 23, 2021).

Concurring in the NOI, Commissioner Christie wrote separately to emphasize how the NOI did not at all concern the free speech of regulated utilities or their trade associations. Rather, he explained, "the central question here is the same one present in so many cases before an economic regulator such as FERC, and that is the less head-grabbing, albeit critically important question: *Who pays*?"[16] As he explained, if "parties are not able to access the information necessary to determine whether the costs included" in rates are "appropriately classified," changes are necessary to make sure the answer to that question is that, where political influence activities are involved, the utility pays, not the ratepayers. *Id.*

Although, as noted, the NOI directed several questions to the trade associations and utilities—who alone possess the information sought—the regulated community and their trade groups ignored these questions. Instead, their responsive comments argued the existing accounting system is more than adequate, without at all engaging with the many deficiencies that had already been identified.[17] They certainly made clear that they would not be voluntarily making any improvements.[18] At the same time, however, the utilities themselves emphasized that they do not *know* which portion of the trade dues they pay is used by the trade associations for influence activities, because that information is known only by the trade groups themselves.[19] For their part, the trade associations argued that almost all of the myriad influence activities they

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16 86 Fed. Reg. at 72,964 (emphasis in original).

17 *See, e.g.,* EEI Comments, RM22-5.

18 *See, e.g,* Comments of Ameren ("the existing processes allow customers and the Commission with more than sufficient means to verify that the portion of dues allocable to lobbying activities have been properly identified and recorded to a below-the-line account").

19 *See, e.g.* Reply Comments of Consumers Energy Company at 8, RM22-5 (Mar. 23, 2022) ("individual IOUs do not, independently, determine the breakdown of industry association dues as between rate recoverable and non-rate recoverable accounts").

regularly engage in are appropriately charged to ratepayers, with the limited exception of the narrow class of lobbying that falls under the IRS lobbying definition.[20]

On the other hand, every non-utility commenter, which included 14 states attorney general[21], numerous large energy users[22], several state utility commissions[23], academics, state consumer advocates, U.S. Senators and representatives, and others urged the Commission to take action on this problem. They gave myriad examples detailing why allowing trade dues to be presumptively recoverable and addressing this issue on a case-by-case basis based on that presumption allows utilities to hide these expenses and forces consumers to pay for unjustifiable costs. Commenters also explained why FERC's limited auditing system and other existing mechanisms have proven entirely inadequate to address this problem. Finally, dozens of commenters explained why the simple and straightforward USofA amendment sought in the Center's Petition would address these problems, by finally forcing utilities and their trade associations to justify these expenses they pass along to consumers.[24]

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[20] *See, e.g.,* EEI Comments, RM22-5 at 6.

[21] Collectively, the Attorneys General and/or state consumer advocates offices for the following states all submitted comments urging Commission action on this issue to protect consumers from inappropriate charges: California, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, Nevada, Oregon, Rhode Island, South Carolina, Virginia, and also the District of Columbia. *E.g.* State Agency Comments, RM22-5 (Feb. 22, 2022).

[22] The Large Energy users supporting action included Chevron U.S.A. Inc., PBF Holding Company, Phillips 66 Company, and American Forest and Paper Association. *E.g.* Comments of the Energy Producers and Users Coalition in RM22-5 (Mar. 23, 2022).

[23] The state Commissions in Louisiana, Ohio and California also all submitted supporting comments. *E.g.* Louisiana PUC Comments, RM22-5 (Feb. 22, 2022).

[24] *See, e.g*., Comments of Thirteen State Agencies (Feb. 22, 2022) at 3, 20 ("Showing that an industry association provides some services that benefit ratepayers should not create a presumption that all dues paid to the industry association are paid for ratepayers' benefit"); Louisiana Public Service Commission Comments (Feb. 22, 2022) ("EEI wields [its] power in favor of utility shareholder profit interests, which most of the time diverges from ratepayer interest in the lowest reasonable cost electric service. The costs of wielding that power should be excluded from rates."); Comments of the Nevada Atty Gen., Bur. Of Consumer Prot. (Feb. 22, 2022) at 4 ("BCP agrees that trade association costs should be included in an account – Account 426 – where the utility has to justify inclusion of these costs rather than the other way around."); Comments of the Illinois Atty Gen. (Feb. 23, 2022) at 3 ("The

The Center also submitted an extensive brief in response to the NOI, explaining why the current case-by-case approach does not ensure just and reasonable rates and why the simple accounting change sought in the Petition would be appropriate.[25] The Center's comments also explained in detail how charging customers for the influence activities of utility trade associations violates their First Amendment rights. *Id.* at 50-60. As the Center explained, the Supreme Court's ruling in *Janus* overturned long-standing Supreme Court precedent which had established how unions could compel employees to pay union dues by separating out expenses for political activities that may not be charged to safeguard union members' First Amendment rights. In *Janus*, the Court found the First Amendment risks so severe that employees could not be compelled to pay any dues at all. *Id.* As a result, the Center explained, because industry associations, like unions, engage in non-recoverable political activities, charging ratepayers for any of these dues violates their First Amendment rights. *Id.* Other commenters raised the same First Amendment argument.

Finally, the Commission also received Reply comments and supplemental comments, both explaining in detail why it must reject the arguments put forward by the utilities and their trade associations seeking to maintain the *status quo*, and how this problem is continuing. [26] For example, the Center's Reply comments explained how EEI and AGA's own opening comments

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people recommend that FERC require industry association dues to be clearly identified and limited to 'below- the-line"' accounts, making them presumptively nonrecoverable."); Comments of the Public Utilities Commission of Ohio (Feb. 22, 2022) ("[W]e believe that these costs should be presumed to be non-recoverable. If an electric utility believes that these expenses are to the benefit of ratepayers, the burden should be on them to prove that cost recovery is just and reasonable."); Comments of the Missouri Solar Energy Industry Assn (Feb. 16, 2022) (same); Comments of the American Forest & Paper Assn (Feb. 22, 2022) at 3-4 (same); Comments of Sunova Energy Int'l (Feb. 22, 2022) (same).

[25] Center Comments, RM22-5 (Feb. 22, 2022).

[26] *See, e.g.* Reply Comments of the Center (Mar. 23, 2022); Reply Comments of States (Mar. 23, 2022), RM22-5; *see also* Supplemental Comments of the Center, RM22-5 (Oct. 4, 2022).

acknowledged the enormous amount of regulatory advocacy they regularly engage in; how these groups do not consider this work to be exempt from ratepayer recovery; and why these expenses in fact should be excluded from rates, since "differences of opinion may and frequently do exist between the companies and their customers," *Alabama Power Co*, 24 F.P.C. 278, 286 (Aug. 17, 1960), over these kinds of activities—such as, *e.g.*, opposing clean energy and climate regulations before agencies and courts.[27]

D. The Commission's Cursory Denial of The Rulemaking Petition

On April 16, 2026, the Commission issued a short Order denying the Rulemaking Petition and withdrawing the NOI. 91 Fed. Reg. 21,286. The 2026 Petition Denial Order briefly summarizes the Petition's request that the Commission amend the USofA to require that industry association dues paid by utilities by recorded below-the-line in a presumptively non-recoverable account. *Id.* It further explains that among the 35 comments received in response to the Petition, some advocated for removing all these dues from rates, while others maintained that no changes are necessary because dues are already properly allocated. *Id.* However, the Order does not mention that many of the commenters supported the simple and commonsense accounting change sought in the Petition, which would not have removed these dues from rates but rather simply force utilities to demonstrate why they are appropriately included as a cost-of-service. It also did not mention the First Amendment issues raised by the Center and others.

Nonetheless, the Order recognized the Commission had issued an extensive NOI as an outgrowth of the Rulemaking Petition, and that the NOI had included a number of questions to

[27] Center Reply Comments in RM22-15 (Mar. 23, 2022) at 7-8); *see also Southwestern Elec. Power Co.* 304 F.2d 29 (explaining how "customers might well be strongly opposed" to influence activities over "matters of public controversy" by their utility companies, and should not have to pay for those activities).

better understand how these issues are currently being addressed, and whether changes are appropriate. *Id.*

Once again, however, while the Order noted that among the almost 100 separate substantive comments received in response to the NOI some argued that there is already "enough transparency into industry association dues," while others argued "there is a lack of transparency," the Order entirely ignored the overwhelming number of comments, from various stakeholders, urging the Commission adopt the simple accounting change sought in the Petition, and explaining precisely why the long-standing case-by-case approach in which these expenses are presumptively recoverable has proven woefully insufficient to protect ratepayers. *Id.* at 21,2187. Finally, the Order noted that "[o]ne commenter proposed that the Commission provide guidance on a case-by-case basis, rather than through general guidance"— which was just another way of urging the Commission to maintain the *status quo*. *Id.*

After providing this summary, which entirely distorted the substantial evidentiary Record before the Commission, the Order devoted a single sentence to purportedly explaining why the Commission has decided to deny the Petition and withdraw the NOI:

> 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 the longstanding Commission practice.

Id. Based on that one unilluminating sentence, the Commission explained it is withdrawing the NOI and "[f]or the same reasons, we also deny the Center for Biological Diversity's Petition." *Id.*

Although the Record overwhelmingly shows that the regulated utility industry maintains the existing approach provides all the necessary transparency, and that utilities do not even know how their industry associations spend the dues they receive from their utility members, the Order

also "encourage[s] regulated entities to [voluntarily] adopt tariff revisions that enhance transparency into the industry association costs included in an entity's rates." *Id.*

The Order then goes on to explain how, in *Newman,* 27 F. 4th 690 (D.C. Cir. 2022), the D.C. Circuit rejected FERC's argument that it is consistent with FERC's mandates for Account 426.4 to only cover *direct* influence expenditures. 91 Fed. Reg. 21,287. Although, as discussed further below, in that proceeding FERC itself had argued that utilities could recover costs for otherwise prohibited influence activities by hiring others to do them on their behalf, the D.C. Circuit explained that, under cost-of-service principles, utilities also could not charge customers for *in*direct influence activities, which also do not serve ratepayer interests. *Newman*, 27 F. 4th 690. However, while the Order mentions *Newman,* the Commission did not try to explain how that ruling is consistent with permitting ratepayers to routinely be saddled with the costs for the indirect influence activities regularly undertaken by utility trade associations. 91 Fed. Reg. 21,287.

Finally, although, as noted, during the course of the proceeding the trade associations—who, again, solely possess the necessary information on how they spend ratepayer dollars—made it clear they only consider the narrow definition of IRS lobbying to be non-recoverable from ratepayers, the Commission stated that Account 426.4 is not limited to that definition. *Id.* But the Commission neither explained in what ways the Account is broader than that narrow definition, nor did it otherwise explain how its opaque interpretation could be implemented—particularly given the fact that neither the Commission nor the regulated utilities have access to the information necessary to understand how the trade associations are spending ratepayer funds.

IV. DISCUSSION

The Commission's Order Is Arbitrary and Capricious Because It Fails To Provide Any Reasoned Explanation For Denying The Rulemaking Petition

The Rulemaking Petition provided two independent reasons for the Commission to take action: (i) to protect ratepayers from subsidizing political activities that are not a legitimate cost-of-service and (ii) to safeguard ratepayers' First Amendment rights. Numerous commenters supported either or both of these rationales for action.

The Commission's Order devotes one sentence to rejecting the first rationale, and it entirely ignores the second. This response is arbitrary and capricious and warrants rehearing.

A. The Commission Must Provide A Coherent Rationale For Rejecting The Overwhelming Record Evidence That The Agency's Long-Standing Approach to Trade Dues Rate Recovery Does Not Sufficiently Protect Ratepayers.

The Commission has long recognized the importance of the USofA to protecting ratepayers. With regard to potentially non-recoverable political influence and related expenditures, the Commission has found that putting those expenses below-the-line in Account 426 appropriately serves to "highlight them for scrutiny in rate proceedings and require the utility to justify their rate recovery."[28]

At the same time, in the NOI the Commission found that it has never "clearly delineated" which expenses used for influence activities are recoverable, and that this lack of a "bright line rule" may be responsible for "stakeholder confusion as to what expenses are properly

[28] *E.g. Potomac-Appalachian Transmission Highline LLC*, 152 F.E.R.C. P63,025, 66,158 (Sept. 15, 2015); *see also, e.g.*, *ISO New England*, 118 F.E.R.C. P61,105, 61,555 (Feb. 15, 2007).

recoverable in rates."[29] Similarly, as the D.C. Circuit has explained, "FERC's accounting rules have quite clearly left the[] issue" of which expenses are recoverable "up in the air."[30]

Moreover, regarding industry association dues in particular, the Commission has found that even when the Commission engages in enforcement audits, the auditors do not have any access to "detailed descriptions of the industry association's activities" charged to member utilities, who pass these costs onto ratepayers.[31] As the Commission has also found, utilities do not require their industry associations "to provide more than simple invoices and thus lack detailed information on the nature of the association's activities for purposes of determining the appropriate classification of costs into above the line and below the line account." *Id.*

In light of these Commission findings, the simple accounting change sought in the Center's 2021 Petition makes eminent sense, as it would require that utilities finally justify the portion of industry association dues that is being charged to customers by showing how those funds are used to benefit ratepayer interests.

In the NOI, the Commission asked the utilities and their trade associations to provide basic information to help the Commission better understand if ratepayers are being inappropriately charged for industry "lobbying, civic engagement, public information campaigns, and the like . . . ." *Id.* at 72,961-62. This included, *e.g.,* (i) the annual dues they are charging utilities; (ii) how expenses are broken down between recoverable and non-recoverable; (iii) how these decisions are made; (iv) how utilities make sure these decisions are made properly; and (v)

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29 86 Fed. Reg. at 72,959.

30 *Braintreee Elec. Light Dept v. FERC*, 550 F.3d 6, 11 (D.C. Cir. 2008).

31 *Id.* at 72,960

how much of the dues is used for activities like legislative affairs, regulatory affairs, and meetings and conferences. *Id.*

However, as noted, *neither the utilities nor the trade associations actually answered any of these questions.* Instead, the trade associations and their utility members uniformly ignored these questions and insisted categorically that the long-standing system is adequate to protect ratepayers. Moreover, EEI argued that the narrow IRS definition of lobbying controlled whether EEI activities could be charged to ratepayers.

On the other hand, as noted, an overwhelming number of commenters all uniformly urged the Commission to take action. Collectively these commenters, like the Center, explained in detail why the current approach does not protect ratepayers precisely because of the lack of transparency. For example, the Record contains specific examples where a utility commission sought further detail on how trade association dues was being spent, and the trade association refused to cooperate.[32] Commenters also explained in even further detail the many kinds of influence expenses that utilities and their trade associations pass along to ratepayers—including, for example, substantial donations the trade groups themselves make to other third parties like the American Legislative Exchange Council and the National Association of Manufacturing.[33]

Around this same time period, the D.C. Circuit issued its ruling in *Newman*, which concerned the meaning of Account 426.4. *Newman*, 27 F. 4th 690. In a portion of the opinion that fully applies to the proper accounting treatment of trade association dues, the Court explained precisely why it would violate FERC's statutory mandates for the agency to allow a utility to

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[32] *See* Center Opening Comments in RM22-5 at 14-15 (discussing case where EEI refused to disclose its expenses funded by ratepayers); *see also, e.g.* 165 FERC P63,001, ¶ 770 (2018) (noting that "PG&E does not know how EEI spends PG&E's contributions").

[33] Center Opening Comments, RM22-5 at 6-8; 20-22.

charge customers for indirect influence expenditures, explaining that if such charges were permitted:

> [a] utility's public relations contractors could simply recruit individuals to influence public officials on their behalf, and because the utility's payments to such contractors would be *one step removed from the influence*, the disputed expenses could [be recovered from ratepayers].

27 F. 4th at 703 (emphasis added).

But that is precisely what the Record here demonstrates is happening with trade association dues: the trade associations engage in influence activities on behalf of their member utilities, and recovery from ratepayers is routinely permitted because the associations are "one step removed" from the utilities themselves. *Id.* Thus, as the Commission heard in comments in the RM22-5 docket, the *Newman* decision is yet another reason the Commission must take action on this issue.[34]

In light of this Record, these many commenters—from state attorneys general offices, U.S. Senators, state utility commissioner, large energy users, consumer advocates, and hundreds of individual ratepayers who raised their voices in these Dockets—deserve a coherent explanation as to why, after issuing a comprehensive NOI and compiling an enormous Record, the Commission has decided to drop this issue entirely. Moreover, the APA demands that the Commission actually engage with the original Rulemaking Petition and, based on the Administrative Record, articulate "a rational connection between the facts found and the choice made." *Antero Res. Corp. v. FERC*, 156 F.4th 654, 660 (D.C. Cir. 2025). The Commission's rationale in the 2026 Petition Denial

[34] *E.g.* Center Comments in RM22-5 at 11-12. The Commission should also amend the USofA to make explicit that indirect influence activities are non-recoverable. Particularly given the importance of the USofA for other agencies and state regulators, it makes little sense to expect that these other bodies will be parsing D.C. Circuit decisions and obscure references in the Federal Register to understand what utility expenses belong in Account 426.4.

Order—*i.e.*, that "the concerns raised in the Notice of Inquiry are better considered on a case-by-case basis" does not meet this basic legal standard.

The D.C. Circuit's ruling in *Flyers Rights* is directly on point. 864 F.3d 738. In that case, the Court considered the Federal Aviation Administration's ("FAA") denial of a Rulemaking Petition that sought new size regulations for aircraft seats on the grounds that smaller seats are a safety hazard in emergencies requiring rapid evacuation. The FAA had denied the Petition on the grounds that decreasing seat size has no effect on evacuation safety. *Id.*

As the Court explained, the Petition had raised a reasonable safety concern, and other commenters had provided concrete examples of how existing seat sizes could make evacuation difficult in the case of an emergency. *Id.* at 744. The Court also explained that the FAA has a statutory mandate to ensure passenger safety, including related to emergency evacuations. *Id.*

Given this mandate and the issues raised by the Petition, the Court found that the FAA must provide a reasonable explanation for why the agency concluded that no action was necessary to comply with the agency's mandate. *Id.* As the Court emphasized:

> When an agency denies a petition for rulemaking, the record can be slim, but it cannot be vacuous. Especially so when, as here, the petition identifies an important issue that falls smack-dab within the agency's regulatory ambit. While we do not require much of the agency at this juncture, we do require something.

Id. at 747.

Applying that standard to the Petition, the Court found that the FAA had failed to reasonably explain *why* the agency had concluded that seat sizes have no bearing on evacuation time or safety, or to engage with the Record that had provided evidence of these concerns. *Id.* at 744-45. Accordingly, the Court deemed the denial arbitrary and capricious in violation of the APA. *Id.* at 745-47.

That reasoning all applies squarely here. As in *Flyers Rights*, the Center's 2021 Rulemaking Petition raised a more than reasonable concern regarding how FERC's accounting system allows utilities to charge ratepayers for activities that are not a legitimate cost-of-service. Many commenters echoed these concerns and provided ample evidence in the Record supporting action by the agency to fulfill its statutory obligations. And, as in *Flyers Rights*, the concerns these parties all raised are squarely within FERC's core mandate to protect ratepayer interests.

Thus, because the Center's Petition raised "an important issue that falls smack-dab within the agency's regulatory ambit," the Commission has an obligation to engage with the Record and provide a cogent explanation for its decision to take no action. *Id.* at 747.

Instead, the Commission's entire rationale was that the agency has decided it is preferable to address these issues on a case-by-case basis. 76 Fed. Reg.at 21,287. But this is a *non-sequitur* to the relief sought in the Petition. Indeed, contrary to the Commission's explanation, the choice was not between continuing to address the rate recovery of industry association dues in individual cases on the one hand or issuing some kind of "general guidance" on the other. *Id.* Rather, the Petition sought a specific change to the USofA to make these dues presumptively non-recoverable in individual cases.

If the Commission were to make this simple accounting change, these issues would continue to be resolved on a case-by-case basis. However, the individual cases would proceed in a fundamentally different manner.

Again, under the existing USofA, industry dues is presumptively recoverable, and thus in individual cases the regulators and Intervenors bear the burden of demonstrating why any portion of that dues might be more appropriately considered non-recoverable. And, as the Record here

overwhelmingly shows, they must do so without access to the basic information necessary for that determination.

On the other hand, were the Petition granted and these dues recorded below-the-line, utilities would only be allowed to recover their industry association dues by affirmatively coming forward with the evidence necessary to show how those expenses were used to actually benefit ratepayers and were therefore a legitimate cost-of-service. Thus, because either way the resolution of who should bear the cost of these expenses would be resolved on a case-by-case basis, the Commission has not provided any explanation at all for its decision to reject the relief requested in the Petition. The Commission has also not explained how permitting these customers to continue to be charged for these indirect influence expenditures is consistent with the D.C. Circuit's ruling in *Newman*, 27 F. 4th 690.

Under basic APA principles, this lack of a reasoned explanation for denying the Rulemaking Petition and withdrawing the NOI is arbitrary and capricious, and warrants rehearing. *Flyers Rights*, 864 F.3d 738; *Texas Corn Producers v. United States EPA*, 141 F.4th 687, 707 (5th Cir. 2025) (a "single conclusory sentence is no substitute for a reasonable and reasonably explained decision").

Finally, the Commission's apparent determination that simply "encourage[ing] regulated entities" to take steps that will "enhance transparency into the industry association costs included in an entity's rates" is somehow sufficient here also runs directly contrary to the Record. 91 Fed. Reg. at 21,287. For example, Intervenor Ameren explained its view that "that existing processes for review of public utility accounting and formula rates, and for the identification of trade association lobbying expenditures, are sufficiently rigorous, open, and transparent"; that "customers and other stakeholders already have the means necessary to interrogate and confirm

that trade associations are properly identifying their lobbying costs"; and that "additional processes would be redundant and are therefore unnecessary."[35] Similarly, ITC Holdings Corporation explained its view that "the recovery and accounting of industry dues are already subject to a high degree of transparency and scrutiny" and that "there is no compelling need for the Commission to impose additional requirements on associations or utilities."[36] The MISO Transmission Owners similarly argued that "numerous mechanisms already exist to ensure that only appropriate expenses associated with trade association activities and other civic, political, and related expenses are recovered in Commission-jurisdictional rates,"[37] and thus no changes are necessary.

In short, regulated utilities have made clear both that they have no relevant information, and that they do not believe that any additional protections are warranted. Thus, by also failing to explain why the agency concluded that utilities might voluntarily provide this additional transparency, or what additional information about the industry association expenses they could provide, the Commission has failed to provide a rational connection between the facts found and the choice made. Rehearing is thus warranted on this basis as well. *See also, e.g., American Horse Prot. Ass'n v. Lyng*, 812 F.2d 1, 5 (D.C. Cir. 1987).

B. The Commission Must Address How Compelling Payment For The Activities Of Industry Associations That Engage In Political Activities Is Consistent With The First Amendment.

The Center's Petition also provided a separate rationale for Commission action, which the 2026 Petition Denial Order completely ignored: charging ratepayers for industry trade

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35 Comments of Ameren Services Company, RM22-5 (Feb. 22, 2022) at 2, 9.

36 Comments of ITC Holdings Corp., RM22-5 (Feb. 22, 2022) at 1

37 Comments of the MISO Trans. Owners, RM22-5 (Feb. 22, 2022) at 10.

association dues where those associations engage in political advocacy violates ratepayers' First Amendment rights.[38]

As the Petition explained, in *Cahill v. PSC*, 76 N.Y.2d 102 (1990), the highest court in New York found that it would violate ratepayer's First Amendment rights to allow utilities to charge them for activities and expenses that go to politically and religiously active organizations. *Id.* Because, the court explained, legitimate expenses must "be germane to the reasonable cost of doing business and to the provision of utility services," there is no compelling interest in allowing these expenses that could outweigh the significant burden placed on ratepayers' First Amendment rights. *Id.* As the court emphasized:

> The doctrinal integrity of First Amendment jurisprudence must be protected from such governmental channelling or blockading of public expression through preferred agents, who then, as in this case, exert monolithic or majoritarian power through a mini-taxing authorization certainly against the interests and beliefs of some ratepayers. This would convert the free marketplace of ideas to the consumer-subsidized preserve of corporate utility ideas.

Id. at 114. Accordingly, the Court found that ratepayers may not be charged for these activities as a matter of constitutional protection. Similarly, the D.C. Circuit in *Braintree* explained that customers "of a government-sanctioned monopoly" may be regarded as protected by the First Amendment in light of Supreme Court precedents.[39]

As the Center's 2021 Petition further explained, and the Center further addressed in later comments,[40] the Supreme Court's ruling in *Janus* similarly emphasized the serious First Amendment implication of compelled subsidization of speech, explaining

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[38] 2021 Petition at 22-27.

[39] *Braintree,* 550 F.3d at 14 (citing *Abood v. Detroit Bd. Of Educ.*, 431 U.S. 209 (1977)); *see also Central Central Hudson Gas & Elec. v Public Serv. Commn.,* 447 US 557 (1980) (applying *Abood* to utility charges).

[40] Center Comments in RM22-5 at 50-60.

how "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning" and thus subject to the highest level of scrutiny to protect First Amendment rights.[41] In light of that concern, the Court overturned decades of Supreme Court precedent and found that unions could no longer divide union dues into recoverable and non-recoverable portions. Indeed, while the dissent had urged this issue be resolved on a case-by-case basis, the majority found that because of the uncertainty of where the boundaries lie, the Constitution requires that unions not be permitted to compel union dues at all. *Id.*

Given this ruling, the Center urged the Commission to also consider whether industry association dues should be recoverable *at all,* since some of those funds support non-recoverable lobbying and, as was true in *Janus*, it is uncertain where the lines between allowable and non-allowable expenses should be drawn.[42] In short, if *no* union dues may be compelled because of the risk that *some* of it might be used for speech that union members do not support, *no* trade dues may be charged to ratepayers to protect against the risk that *some* of it may be used for non-recoverable activities. Other comments raised the same issue here, including members of Congress and State Attorneys General.[43]

Notwithstanding this discrete basis for action presented in the 2021 Rulemaking Petition, in denying the Petition the Commission *did not address this issue at all.*

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41 *Janus*, 585 U.S. at 893.

42 Center RM22-5 Comments at 50-60.

43 *See, e.g.*, Maryland Atty General Comments in RM21-15 (Sept. 2, 2021) at 7-8; Nevada Atty General Comments in RM21-15 at 5-7 (Apr. 23, 2021); Letter from five U.S. Senators in RM21-15 (June 24, 2021).

This refusal to address a discrete argument in the Rulemaking Petition is arbitrary and capricious and also warrants rehearing. *E.g., Ohio v. EPA*, 603 U.S. 279, 293–94 (2024) (addressing agency's obligation to respond to issues fairly raised).

V. CONCLUSION

For the foregoing reasons, the Commission should grant rehearing.

Respectfully submitted,

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May 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in these two Dockets.

DATED: May 18, 2026

/s/ Howard M. Crystal