UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Information Collections and Request for Comments	)))	Docket No. IC25-7-000

COMMENTS OF THE ENERGY AND POLICY INSTITUTE

I. INTRODUCTION

In response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") notice of information collections and request for comments regarding the currently approved information collections, FERC Form Nos. 1 (Annual Report of Major Electric Utilities, Licensees, and Others), 1-F (Annual Report for Nonmajor Public Utilities and Licensees), and 3-Q (Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas companies), the Energy and Policy Institute ("EPI"), a nonprofit utility watchdog organization, submits comments on ways "to enhance the quality, utility, and clarity of the information collection." 90 Fed. Reg. 9151, 9153 (2025).

In large part due to vital transparency gaps in existing utility expenditure reporting requirements, audits and investigations by the Commission and state public utility commissions are often necessary to reveal details about how utilities misuse ratepayer money.[1] In audits that concluded between 2016 and 2022, the Commission's Division of Audits and Accounting

[1] The Commission's Division of Audits and Accounting (DAA) audit program has found numerous examples of utilities routinely violating the Uniform System of Accounts by misallocating charitable donation expenses, lobbying, advertising, and legal expenses, along with improper allocation among affiliates. Investigations and audits by the Illinois, Maryland, New Jersey, Ohio, Pennsylvania, and West Virginia state public utility commissions have also revealed details about misuse of ratepayer money by utilities; however, it is a common occurrence in the state ratemaking process in which intervenors frequently contest unnecessary expenses and uncover inappropriate spending by utilities.

(DAA) uncovered at least $20 million in lobbying, charitable and political advertising expenses that utilities incorrectly recorded in accounts that led to the improper inclusion of those costs in wholesale power and transmission formula rates.[2] The Commission's Office of Enforcement annual Report on Enforcement for at least the past five years has noted that the DAA finds respondents of FERC Form No. 1 have "patterns of noncompliance" in several areas, including Administrative and General (A&G) Expenses.[3] Examples of noncompliance with the A&G expense accounts include lobbying expenses, charitable contributions, and costs of service provided to affiliates, among others.

The Commission can address this problem by instructing respondents of FERC Form No. 1 to itemize the disclosure of expenses allocated to certain accounts within the Uniform System of Account ("USofA"). By requiring respondents of FERC Form No. 1 to itemize and provide more details of certain accounts, the Commission will increase transparency, allow improved and more efficient scrutiny by staff at the Commission, and deter abuses of customer accounts. This straightforward approach would also benefit state Attorneys General, state utility commissions, and consumer protection groups who intervene in state utility ratemaking procedures but are also concerned with wholesale rates, all ultimately protecting customers.[4]

The itemization requests are neither novel nor unprecedented. Electric utilities used to be required to provide the "particulars" of their charitable contributions and itemize industry

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[2] Energy and Policy Institute analysis of DAA audits is available at the Google Sheet link: https://docs.google.com/spreadsheets/d/e/2PACX-1vTIQsdtJ4CPO_0_Vt9Xf25vBBg51di6R5cfyK3TgTg7zlY1kvLs_0SiG5LX4mH7R8mw1FdHgkxaeSRn/pubhtml

[3] The Report on Enforcement for years 2024, 2023, 2022, 2021, and 2020 are available at Dockets No. AD07-13-018, AD07-13-017, AD07-13-016, AD07-13-015, AD07-13-014.

[4] See Docket No. RM22-5-000, containing comments from numerous state Attorneys General offices, several state public service commissions, consumer advocates, and public interest organizations noted information imbalances and requested that the Commission require utilities to provide detailed data on political activities and/or require respondents of FERC Annual Report Forms to provide more information on expenses to provide the requisite transparency.

association dues on Form No. 1.[5] Utilities were also previously required to itemize certain disclosures in SEC Form U-13-60; that practice ended when FERC implemented the Public Utility Holding Company Act of 2005 and revised Form No. 60.[6]

Many parties, especially individual ratepayers, lack the resources, access to information, or both that are necessary to challenge the categorization of a cost. Through itemization of certain USofA accounts that have been prone to abuse, the Commission can enhance the transparency of the industry, ensuring just and reasonable rates.

II. REQUIRE ITEMIZATION FOR ACCOUNTS 426.1, 426.4, 426.5

The Commission should instruct respondents to provide an itemized list of expenses in Account 426.1, Donations; Account 426.4; Expenditures for Certain Civic, Political and Related Activities; and Account 426.5, Other Deductions. Utilities have been known to improperly include these types of expenses in other USofA accounts. For example, the DAA uncovered that the American Transmission Company, during an audit of the time period January 1, 2013 to October 31, 2017, recorded all labor costs of its internal lobbyist in Account 920, which should have been recorded in Account 426.4.[7] As another example, the DAA's audit of San Diego Gas & Electric, which examined the time period January 1, 2016 through February 4, 2020, concluded that the company did not establish controls after a previous 2014 audit, and found expenses paid to consultants and industry groups to influence legislation that should have been

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[5] See, as examples, Carolina Power & Light's Form No. 1 for 1990: https://www.documentcloud.org/documents/25077657-carolina-power-light-ferc-form-1-for-1990/#document/p158; Duke Power's Form No. 1 for 1990: https://www.documentcloud.org/documents/25076518-duke-power-ferc-form-1-1990/#document/p135

[6] Docket No. RM06-11-000. Comments from the National Association of Regulatory Utility Commissioners (NARUC) in the docket noted the importance of certain USofA account details being an "important tool for understanding service company costs and functions."

[7] Office of Enforcement letter to American Transmission Company LLC, Docket No. FA16-1-000.

allocated to Account 426.4, as well as charitable contributions through industry association dues that should have been recorded in Account 426.1[8] As yet another example, the DAA similarly found, during an audit that covered January 1, 2018 through December 31, 2021, that Florida Power & Light allocated charitable contributions to Account 930.2 that should have been recorded in Account 426.1, and recorded transaction-related costs associated with mergers, acquisitions and an internal reorganization in Account 930.2; those were required to be recorded in Account 426.5.[9]

Itemized information indicating the nature and purpose of expenses recorded in Accounts 426.1, 426.4, and 426.5 would provide greater transparency and opportunities for regulators and intervenors to better ensure that utilities not abusing the formula ratesetting system but rather are properly allocating expenses that are made for the purpose of benefiting shareholders to the correct accounts.

RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING ACCOUNTS 426.1, 426.4, 426.5

1. Provide a blank page within pages 114 - 117 for respondents to itemize Account 426.1 expenses with the following instructions: "Provide an itemized list of costs incurred and charged to Account 426.1. In column (a) report the name and address of the recipient. In column (b) report the amount. Donations to the same recipient may be aggregated."
2. Provide a blank page within pages 114 - 117 for respondents to itemize Account 426.4, Expenditures for Certain Civic, Political and Related Activities, expenses with the following instructions: "Provide an itemized list of costs incurred and charged to Account 426.4. In column (a) report the name of the recipient and address of the recipient. In

[8] Office of Enforcement letter to San Diego Gas & Electric Company, Docket No. FA19-3-000.
[9] Office of Enforcement letter to Florida Power & Light Company, Docket No. FA21-6-000.

column (b) report the purpose of the expense. In column (c) report the amount. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines."

3. Provide a blank page within pages 114 - 117 for respondents to itemize Account 426.5, Other Deductions, expenses with the following instructions: "Provide an itemized list of costs incurred and charged to Account 426.5. In column (a) report the recipient of the expense and address of the recipient, if it is an external vendor. Note "internal" if the expense was incurred internally. In column (b) report the purpose of the expense. In column (c) report the amount. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines."

III. REQUIRE ITEMIZATION FOR ACCOUNTS 909, 913, 923, 930.1, 930.2

The Commission should instruct respondents to provide an itemized list of expenses in Account 909, Informational and Instructional Expenses; Account 913, Advertising Expenses; Account 923, Outside Services Employed; Account 930.1, General Advertising Expenses; 930.2, Miscellaneous General Expenses. One consumer advocate has referred to these 900-series accounts, or Administrative and General (A&G) above-the-line accounts, as "catch-all" accounts.[10] As noted by the DAA, utilities frequently allocate expenses that may principally benefit the interest of the utility's shareholders but do not provide a direct or primary benefit to consumers to A&G accounts. For example, the DAA audit of National Grid USA, from January 1, 2013 through December 31, 2018, revealed improper recording of donations to Account 930.2,

[10] Ohio Consumers' Counsel comments in Docket No. RM22-5-000.

instead of 426.1.[11] In an audit of Ameren Corporation for the time period of January 1, 2016 through December 31, 2019, the DAA uncovered work performed by a third-party vendor, including advertising and public relations, to promote a non-regulated affiliate, with the expenses charged to Account 923.[12] The DAA's audit of FirstEnergy Corporation for the time period January 1, 2015 to September 30, 2021 revealed that the FirstEnergy Service Company recorded approximately $10.9 million of lobbying costs in utility operating expense accounts, including Account 923, rather than in Account 426.4.[13] The audit also disclosed that the company misallocated advertising, donations, and other costs. Years earlier, in 2006, the National Association of Regulatory Commissioners and other stakeholders had warned FERC not to eliminate itemized schedules of payments for outside services from Form 60.[14]
"Outside services and employee expenses are major components of expense (along with labor) incurred by a service company," NARUC said. "The detail in these schedules provides an important tool for understanding service company costs and functions."

Respondents possess information about these expenses and can provide an itemized description of the expenses currently reported in aggregate in the annual form, increasing transparency for customers and regulators. Currently, respondents are instructed to detail "other expenditures" for Account 930.2 that are greater than or equal to $5,000 and must show the "purpose, recipient, amount." But the form currently instructs respondents only to aggregate "Industry Association Dues," "Nuclear Power Research Expenses," and "Other Experimental and General Resource Expenses" into those categories, not to itemize the expenses. Respondents

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[11] Office of Enforcement letter to National Grid USA, Docket No. FA16-2-000.
[12] Office of Enforcement letter to Ameren Corporation, Docket No. FA20-6-000.
[13] Office of Enforcement letter to FirstEnergy Corporation, Docket. No. FA19-1-000.
[14] NARUC comments in FERC Docket No. RM06-11-000 https://www.documentcloud.org/documents/20476139-20060808-50374428763/.

describe and show costs incurred and accounts charged in other data that they report on the Form No. 1, including technological research, development, and demonstration activities continued or concluded during the reporting year.

To allow for effective scrutiny by the Commission and customers and to deter abuses, itemization should require separate line-item entries for each vendor, with expenses made to the same vendor but for different purposes reported on separate lines, for Accounts 909, 913, 923, 930.1, and 930.2.

<u>RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING ACCOUNTS 909, 913, 930.1</u>

1. Provide a blank page within pages 320 - 323 for respondents to itemize Account 909, Informational and Instructional Expenses with the following instructions: "Provide an itemized list of costs incurred and charged to Account 909. In column (a) report the vendor and address of the vendor. Note "internal" if the expense was incurred internally. In column (b) report the purpose of expense. The purpose should contain more detail than simply repeating that the expense is informational or instructional in nature. In column (c), report the nature of the medium or media used (e.g. print, digital, television, bill insert, etc.) . In column (d), report the amount that went toward producing materials. In column (e) report the amount that went toward buying media. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines."
2. Provide a blank page within pages 320 - 323 for respondents to itemize Account 913, Advertising Expenses with the following instructions: "Provide an itemized list of costs incurred and charged to Account 909. In column (a) report the vendor and address of the

vendor. Note “internal” if the expense was incurred internally. In column (b) report the purpose of expense. The purpose should contain more detail than simply repeating that the expense is for Advertising. In column (c) report the nature of the medium or media used (e.g. print, digital, television, bill insert, etc.). In column (d) report the amount that went toward producing materials. In column (e) report the amount that went toward buying media. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines.”

3. Provide a blank page within pages 320 - 323 for respondents to itemize Account 930.1, General Advertising Expenses with the following instructions: “Provide an itemized list of costs incurred and charged to Account 909. In column (a) report the vendor and address of the vendor. Note “internal” if the expense was incurred internally. In column (b) report the purpose of expense. The purpose should contain more detail than simply repeating that the expense is for General Advertising. In column (c) report the nature of the medium or media used (e.g. print, digital, television, bill insert, etc.). In column (d) report the amount that went toward producing materials. In column (e) report the amount that went toward buying media. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines.”

<u>RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING ACCOUNT 923</u>

1. Provide a blank page within pages 320 - 323 for respondents to itemize Account 923, Outside Services Employed, expenses with the following instructions: “Provide an itemized list of costs incurred and charged to Account 923. In column (a) report the name

and address of the vendor. In column (b) report the purpose of the service rendered by each vendor. In column (c) report the amount. Expenses made to the same vendor for the same purpose may be aggregated. Expenses made to the same vendor but for different purposes should be reported as separate lines."

RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING ACCOUNT 930.2

1. Revise the provided blank page on page 335 for respondents to provide details regarding Account 930.2, Miscellaneous General Expenses to include the instruction: "Provide an itemized list of costs incurred and charged to Account 930.2. In column (a) report the recipient. Report the name and address of each industry association, name and address of each recipient associated with nuclear power research expenses, name and address of each recipient associated with other experimental and general research expenses, and the name and address of each recipient associated with any other expense included in the account. Note "internal" if the expense was incurred internally. In column (b) report the purpose of the expense. In column (c) report the amount. Expenses made to the same recipient for the same purpose may be aggregated. Expenses made to the same recipient but for different purposes should be reported as separate lines."

IV. REQUIRE MORE TRANSPARENCY FOR ACCOUNT 928

The Commission should require respondents to provide more details about regulatory commission expenses. Respondents are currently required to report "regulatory commission expenses incurred during the current year (or incurred in previous years, if being amortized) relating to formal cases before a regulatory body, or cases in which such a body was a party" along with details about the expenses and the accounts to which the expenses were charged (e.g.

income, plant, or other accounts). The DAA has frequently found utilities misallocating costs that should otherwise be charged to Account 928. For example, Northern States Power Company (Minnesota) entered settlement amounts to resolve employee discrimination claims in accounts, including 928, that should have been classified in Account 426.5.[15] States agencies have noted to the Commission that utilities "complicate regulatory proceedings, and raise their expenses, including for example when a utility withholds or provides incorrect data" and have requested the Commission to help "unmask the difference between legitimate and illegitimate expenditures."[16]

<u>RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING ACCOUNT 928</u>

1. Column (a) instructions are confusingly worded. Revise column (a) instructions in the provided blank page on Page 350 to reflect that for both fees assessed by a regulatory commission, and for expenses by the utility, respondents should provide information about the regulatory commission or body: "Description (For assessed fees, furnish name of regulatory commission or body assessing a fee. For expenses by the utility, furnish the name of the regulatory commission or body, the docket or case number, and a description of the case.)."
2. Insert a new column to require respondents to list the name and address of the recipient of expenses by utility respondents that are not fees assessed by a regulatory commission. Expenses made to the same recipient for the same docket or case number may be aggregated into a single line. Expenses made to the same recipient but for different

[15] Office of Enforcement letter to Northern States Power Company (Minnesota), Docket No. FA17-5-000.
[16] Reply Comments from the Joint Consumer Advocates (Office of People's Counsel for the District of Columbia, Iowa Office of Consumer Advocate, New Hampshire Office of the Consumer Advocate, New Jersey Division of Rate Counsel, South Carolina Office of Regulatory Staff, and the Public Utility Law Project of New York) in Docket No. RM22-5-000.

purposes should be reported as separate lines. Note “internal” if the expense was incurred internally.

V. REQUIRE ITEMIZATION FOR TRANSACTIONS WITH ASSOCIATED (AFFILIATED) COMPANIES

If the Commission accepts these suggestions to create greater transparency by requiring respondents to itemize their disclosures in certain accounts that are susceptible to abuse, then the Commission should also require similar itemization of expenses from any of these specific accounts when utilities transact with their affiliates, so that they cannot hide from this requirement by routing money through service companies. After the announcement that FirstEnergy had been charged federally with conspiring to commit honest services wire fraud and agreed to pay a $230 million monetary penalty, and subsequent federal and state investigations and audits, the Ohio Consumers' Council urged the Commission to take multiple actions to create transparency “to protect customers from paying charges for illicit activities such as those that happened in Ohio involving FirstEnergy and its affiliates concerning H.B.6.”[17] Our recommendations in this docket encapsulate many of the Ohio Consumers' Council recommendations, including the requirement that respondents detail and provide information about the transactions between the central holding company and subsidiaries to help inform if the costs were “directly or indirectly allocated to any of the utility's affiliates, and the associated amounts so allocated.”[18]

[17] Ohio Consumers' Counsel comments in Docket No. RM22-5-000.
[18] *Id*.

RECOMMENDED CHANGES TO FERC FORM NO. 1 REGARDING TRANSACTIONS WITH ASSOCIATED (AFFILIATED) COMPANIES

1. Delete the following in what is currently instruction (3) in the provided blank page on Page 429: "The reporting threshold for reporting purposes is $250,000." The threshold applies to the annual amount billed to the respondent or billed to an associated/affiliated company for non-power goods and services."
2. Add the following instruction: Where an associated (affiliated) company is paid for or allocates the cost of services provided by an unaffiliated third party that involve Accounts 426.1, 426.4, 426.5, 909, 913, 923, 930.1, and 930.2, report the name and address of the unaffiliated third party. In those cases, paid or allocated expenses for services provided by a third party for the same purpose may be aggregated. Paid or allocated expenses for services provided by the same third party but for different purposes should be reported as separate lines."

V. CONCLUSION

By instructing respondents to provide itemized data in the aforementioned USofA accounts, the Commission will provide a ready and accessible form that will allow its staff, state regulatory bodies, and ratepayers to reasonably examine costs and challenge any inclusion of inappropriate costs in rates, saving ratepayers money.

EPI appreciates the Commission's solicitation of comments on FERC Form No. 1. We respectfully urge the Commission to consider the above comments as it considers ways to enhance the quality, usefulness, and clarity of the information collected.

If the Commission needs additional information or has any questions, please contact David Pomerantz at pomerantzd@energyandpolicy.org.

Respectfully submitted,

s/ David Pomerantz

David Pomerantz
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