Getting Politics Out of Utility Bills

How policymakers can protect customers from being forced to fund utilities' political machines

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January 2023

ENERGY AND POLICY INSTITUTE

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The Energy and Policy Institute is grateful for contributions to this report from reviewers including Howard Crystal of the Center for Biological Diversity and Cole Triedman from E9 Insight. Any errors in the report are our own.

I. Executive Summary

America's monopoly electric and gas utilities are using the money that they collect from customers' monthly bills to fund political machines that push legislation, curry favor with regulators, and alter the outcomes of elections, sometimes even breaking laws in the process.

A combination of vague and outdated rules ridden with loopholes, a lack of visibility into utility political influence activities for regulators and the public, and an abdication of enforcement by regulators has meant that utilities have had free reign to use their customers' money toward their political operations.

This report offers best practices and new ideas in three complementary categories that policymakers can adopt to protect customers.

1. **Policymakers should pass tighter, updated rules to prevent utilities from using ratepayer money for any political activity, broadly and clearly defined.**

2. **Policymakers should require regular mandatory disclosures that provide greater visibility into utilities' political spending.**

3. **Policymakers should set up explicit enforcement regimes, including effective fines for violations, to deter utilities from breaking these rules.**

The rest of this report details how public utility commissions, state legislatures, FERC, Congress, and other federal agencies can adopt these three types of mechanisms. Combined, these actions will ensure customers are protected from paying for their utilities' political activities.

The report is organized by type of policymaker for ease of reference.

II. Introduction

In the last three years alone, the public has learned that:

- An Ohio utility, FirstEnergy, paid $60 million in bribes to the Ohio House speaker's political organization. In return the utility secured a $1 billion ratepayer-funded bailout for several of its unprofitable nuclear and coal plants, and another lucrative provision that guaranteed the profits of FirstEnergy's Ohio utilities at ratepayers' expense.[1]

- Florida Power and Light spent millions of dollars on political consultants who engineered a scheme to siphon votes to third-party "ghost candidates" who were recruited to appear on the ballot for competitive state Senate seats without actually running, according to reporting by the Orlando Sentinel. The utility-backed effort targeted legislators who were trying to hold the utility accountable, the Sentinel reported.[2]

- ComEd, the largest electric utility in Illinois, arranged jobs and contracts for associates of then-Illinois House Speaker Michael Madigan to influence and reward the official for his efforts to pass legislation favorable to the utility.[3]

  In at least the Ohio[4] and Illinois[5] examples, subsequent regulatory actions have made it clear that the utilities used customer money to fund portions of their schemes. Investigations into the Florida scandal remain ongoing.

The situation demands remedy for multiple reasons.

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[1] "Selling out in the Statehouse." Breaking down the HB 6 bribery: A timeline of Ohio's worst scandal. The Enquirer, July 29, 2021. https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/.
[2] Garcia, Jason, and Annie Martin. "Florida Power & Light Execs Worked Closely with Consultants behind 'Ghost' Candidate Scheme, Records Reveal: Special Report." Orlando Sentinel. Accessed January 8, 2023. https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-senate-ghost-candidates-20211202-szjhv7ox6vcmphm6pgd437y52i-htmlstory.html.
[3] Arnold, Tony, and Dave McKinney. "ComEd Charged with Bribery for Steering Jobs, Other Benefits for Speaker Michael Madigan. Speaker Denies the Feds' Claims." WBEZ Chicago. WBEZ Chicago, September 21, 2020. https://www.wbez.org/stories/comed-avoids-prosecution-in-sprawling-corruption-probe-over-its-springfield-%20lobbying-activities/67133f96-6dc0-4e62-81cf-a9ebc6edad9c.
[4] "Selling out in the Statehouse." Breaking down the HB 6 bribery: A timeline of Ohio's worst scandal. The Enquirer, July 29, 2021. https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/.
[5] Long, Ray. "Proposal Calls for ComEd to Pay $38 Million Back to Ratepayers for Scandal Tied to Michael Madigan Indictment." Chicago Tribune, June 15, 2022. https://www.chicagotribune.com/politics/ct-comed-scandal-38-million-icc-20220614-ltg7v4s3djfu7bmmu4usfb6veu-story.html.

First, utilities are often using their ratepayer-funded political machines to slow the nation's urgently-needed transition away from fossil fuels and toward clean energy. Working hand-in-hand with their trade associations, the Edison Electric Institute and American Gas Association, utilities continue to fight tooth-and-nail against policies that enable the adoption of essential technologies like rooftop solar power, energy efficiency and building electrification.

Even among utilities who have begun to slowly but surely move at least their own generation portfolios from fossil fuels to wind and solar farms, political corruption remains a problem and a threat to the energy transition. Customers will be understandably skeptical if they hear that a utility's closure of a coal plant and investment in a wind farm will save them money, if they also are reading headlines about how that same utility has used its army of lobbyists to ensure its ownership of the new assets without competition from third parties.

In other words, if utilities are going to be at the center of our transition from fossil fuels to clean electricity, customers need to be able to trust that they are not corrupt. Legislators and regulators should pair policies that use financial incentives to accelerate utilities' transition to clean energy, such as the Inflation Reduction Act, with ones that check their ability to spend ever-escalating sums of ratepayer-subsidized money on our politics. Failing to do so will make the energy transition needlessly expensive and set the stage for a customer backlash against decarbonization.

The customer-funded political machines threaten not just climate action, but also consumers' pocketbooks. Utilities are advocating, lobbying, and spinning up public relations efforts every day which push for higher profits, and to thwart competition that can lower their customers' bills.

Finally, every time a utility conscripts its customers to fund their political advocacy, they trample on those customers' First Amendment rights. Utility customers should not be forced to pay for political advocacy with which they may not agree.

State and federal policymakers' task of constraining the most harmful aspects of utilities' political spending would be far easier if they could enact broad campaign finance reform to weaken corporations' ability to spend on elections. A combination of legislative gridlock and court decisions that protect corporate political spending as speech have made those reforms elusive.

However, even absent campaign finance reform, regulators and legislators can still take many actions to address *ratepayer-subsidized* utility political machines and their attendant corruption.

All corporations, after all, can spend money on politics. What makes regulated utilities unique is their monopolies. Customers cannot choose which company delivers them electricity or gas. (Even in states that restructured or "deregulated" their electricity or gas markets to allow customers to choose retailers still have monopolies who set rates for energy transmission and distribution that are passed through to customers.)

Unlike other companies, regulated monopoly utilities can force customers to fund their political expenditures through the rate-collection process, effectively turning them into a conscripted army of millions of small-dollar donors. That provides an almost limitless open spigot of money that pours first into utility accounts, and then into our politics.

But that ratepayer subsidization is a problem that regulators and legislators are well equipped to solve.

State Public Utility Commissions and the Federal Energy Regulatory Commission are charged with protecting customers from paying for utility expenses that are not "just and reasonable." In most cases, these regulators' rules and precedent suggest - at least on paper - that utilities are supposed to be funding their political influence activities from their own profits, rather than from customers' rates. That line of demarcation between ratepayer-funded expenses and expenses taken from shareholder profits can be murky; utilities who are denied recovery of some expenses might pad other ones in order to avoid taking a hit on profits, particularly for utilities that operate in multiple jurisdictions. But still, regulators can do a lot to prevent utilities from charging customers for politics. By doing so, they force utilities to at least choose between spending their profits on political advocacy and delivering it to shareholders in the form of dividends - and that choice could prove far more difficult for them than the easy one currently facing them, which is whether or not to spend their customers' money on politics.

Types of Utility Influence Spending

Before delving into the tools that regulators have to crack down on utilities' charging of customers for political activities, it's useful to understand some of the most common ways that utilities seek to influence politics and public opinion. They include:

1. **Direct spending on elections**, including campaign contributions, independent expenditures, ballot initiative spending, contributions to political action committees (PACs), contributions and sponsorships of political parties, and other legal tools of spending on elections:

As with all corporations, utilities have a host of ways of legally injecting money into races to support or oppose candidates, parties and issues. Utility regulators' rules and precedents are the clearest and strongest on these types of influence spending: utilities are not permitted to recover these costs from customers and rarely try to do so. Still, utilities often have sought to charge customers for election-influencing tactics by using third parties in more covert ways that fall into the below categories.

2. **Lobbying**: Lobbying does not have a single definition. The federal government, state governments, and even different agencies within both have various definitions of lobbying. Generally speaking, lobbying refers to efforts to influence the making or changing of laws. Some definitions of lobbying also include efforts to influence the making or changing of regulations, but some do not.

   Most utility regulators say that they do not allow utilities to recover lobbying costs from customers, but the varied definitions of lobbying, and a host of loopholes, mean that's often not the case in practice. Utilities and their trade associations have often sought to defend their recovery of various types of lobbying expenses by seeking to apply the narrowest possible definition of lobbying, such as the definition that the IRS uses to determine whether organizations are tax-exempt, rather than broader definitions employed in other regulations or statutes.

3. **Trade Associations**: As EPI and others have documented, most utility trade associations are inherently political.[6] Some of them, like the Edison Electric Institute and American Gas Association, spend tens of millions of dollars per year seeking to influence elections, lobbying, making politically-motivated charitable donations, attempting to sway public opinion, and orchestrate their advocacy through third parties, including academia.

4. **Charitable and spending on "social welfare" organizations:** Utilities often use charitable giving to 501(c)(3) organizations toward their political goals[7] by soliciting support from the groups in political matters, utilizing the giving to burnish their reputation, and supporting policymakers' favored organizations.

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[6] Kasper, Matt, David Pomerantz, and David Anderson. "Paying for Utility Politics: How Ratepayers Are Forced to Fund the Edison Electric Institute and Other Political Organizations." Energy and Policy Institute, May 2017. https://www.energyandpolicy.org/utility-ratepayers-fund-the-edison-electric-institute/.
[7] "Strings Attached: How utilities use charitable giving to influence politics and increase profits." Energy and Policy Institute, December 2019. https://www.energyandpolicy.org/strings-attached-how-utilities-use-charitable-giving-to-influence-politics-increase-investor-profits

“[G]iving away other people’s money is not altruism.”
– Commissioner Mark Christie

Utilities give money to 501(c)(3) and 501(c)(4) non-profit organizations. 501(c)(3) non-profits are “traditional” charitable organizations that are not allowed to support political candidates or conduct lobbying with a substantial portion of their activities in order to maintain their tax-exempt status. Donations to these organizations are tax-deductible.

Ratepayers can give their own money away however they please as individuals without being conscripted to do so by their utility companies. As FERC Commissioner Mark Christie, a former Virginia utility regulator, has said, “giving away other people’s money is not altruism.”[8]

501(c)(4) non-profits are “social welfare” organizations that are permitted to lobby as a primary activity and which may engage in some limited political activities to influence elections. Because the IRS has largely abdicated enforcement of those limits, utilities have commonly - and secretly - routed money to 501(c)(4) organizations as vehicles to influence elections and politics without disclosing it.[9]

When FirstEnergy secretly spent over $60 million on a large-scale bribery scheme to influence the actions of the now indicted former Ohio House speaker Larry Householder, 501(c)(4) organizations were central to that scheme.[10]

Arizona Public Service secretly routed over $10 million to 501(c)(4) organizations that used the money to spend on the election of APS’ preferred candidates for its regulatory commission, the Arizona Corporation Commission, in 2014.[11]

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[8] Christie, Mark. “Remarks of Mark C. Christie upon Taking Oath of Office to Ferc.” Federal Energy Regulatory Commission, January 4, 2021. https://www.ferc.gov/news-events/news/remarks-mark-c-christie-upon-taking-oath-office-ferc.
[9] Matt Corley and Adam Rappaport April 28. “The IRS Is Not Enforcing the Law on Political Nonprofit Disclosure Violations - Crew: Citizens for Responsibility and Ethics in Washington.” CREW | Citizens for Responsibility and Ethics in Washington, April 28, 2022. https://www.citizensforethics.org/reports-investigations/crew-reports/the-irs-is-not-enforcing-the-law-on-political-nonprofit-disclosure-violations/.
[10] Kasper, Matt, David Pomerantz, and David Anderson. “Paying for Utility Politics: How Ratepayers Are Forced to Fund the Edison Electric Institute and Other Political Organizations.” Energy and Policy Institute, May 2017. https://www.energyandpolicy.org/utility-ratepayers-fund-the-edison-electric-institute/.
[11] Randazzo, Ryan. “APS Acknowledges Spending Millions to Elect Corporation Commission Members, after Years of Questions.” The Arizona Republic. The Republic | azcentral.com, March 29, 2019.

In the FirstEnergy example, a subsequent regulatory audit revealed that the utility used customer money to fund at least a portion of its bribery scheme, with the final amounts still to be determined as the regulatory audits continue.[12]

5. **Public Relations, Marketing and Advertising:** Utility marketing and advertising are so common that in some cities, it can feel like a utility's logo is hard to escape. Marketing can include sponsorships of professional sports stadiums, performance venues, museums, and other aspects of public life, in addition to advertisements that run in every medium. Utilities also sponsor industry conferences and events.

   Unlike companies in normal markets, regulated monopoly utilities do not have competitors. Their advertising and marketing largely serves to elevate the utilities' reputation and preserve their political standing and social license. Although these costs are not associated with delivering service to customers, many state regulators and FERC allow them to be included in rates to varying degrees.

6. **Astroturfing:** When utilities want to spend money to influence a political outcome, but suspect that the public or politicians won't trust the argument coming from them, they sometimes resort to the practice of astroturfing, where they pay third parties to create the appearance of public support for the utility's position, whether it exists or not.

   In one example, a firm paid by an Entergy contractor paid actors to testify on behalf of the company's proposed gas plant in front of the New Orleans City Council in 2017.[13] Entergy said that no ratepayer funds were used to pay the contractor.[14]

   In another, South Carolina lawmakers received a flood of emails in support of Dominion Energy's 2018 proposed acquisition of SCANA Corporation, the

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https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/.

[12] Jeremy Pelzer, cleveland.com. "Audit: FirstEnergy Improperly Used Ratepayer Money to Fund HB6 Dark Money Efforts." Cleveland.com, February 4, 2022. https://www.cleveland.com/news/2022/02/firstenergy-ordered-by-feds-to-refund-customers-for-house-bill-6-lobbying-costs.html.

[13] Maldonado, Michael Stein and Charles. "Entergy Investigators: Company Knew or Should Have Known about Paid Actors at Council Meetings." The Lens, October 29, 2019. https://thelensnola.org/2018/10/29/entergy-investigators-company-knew-or-should-have-known-about-paid-actors-at-council-meetings/.

[14] Bade, Gavin. "Entergy Says It Had No Knowledge of Paid Support for New Orleans Gas Plant." Utility Dive, May 11, 2018. https://www.utilitydive.com/news/entergy-says-it-had-no-knowledge-of-paid-support-for-new-orleans-gas-plant/523376/.

holding company of South Carolina Electric and Gas.[15] The emails urged legislators not to take action that could derail the sale to Dominion. The emails were crafted by the Consumers Energy Alliance (CEA), a pro-industry group whose members include Dominion and which is operated by the private firm HBW Resources. Dominion has disclosed only the "lobbying portion" of its dues to CEA in annual disclosures to shareholders. Dominion might be excising only that portion of its CEA dues from ratepayer recovery.

That was not the first time CEA created spurious letters of support for a utility's position. In 2014, CEA submitted a fake petition that attacked a rooftop solar policy and defended utility companies' fixed-rate increase proposals in Wisconsin.[16] In 2016, a group of Ohio property owners called for an investigation into CEA after it sent 347 letters to FERC in support of a pipeline proposed by Nexus Gas Transmission using the names of local residents, including a man who had been dead since 1998.[17] DTE Energy and Enbridge were co-owners of the pipeline at the time and both members of CEA.

Of these six political influence tools, most regulators only explicitly bar the utilities from charging customers for the first two - and even those bans are riddled with loopholes and sometimes ignored.

A Three-Legged Stool of Solutions:

The basic recipe for policymakers to protect customers from being forced to fund utilities' political spending is three-fold:

1. **Rules:** Policymakers should pass tighter, updated rules to prevent utilities from using ratepayer money for any political activity, broadly and clearly defined.

2. **Disclosure:** Policymakers should require regular mandatory disclosures that provide greater visibility into utilities' political spending.

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[15] Lovegrove, Jamie. "Fraudulent Emails Backing South Carolina Utility Sale Still Being Sent to Lawmakers." Post and Courier, February 27, 2018. https://www.postandcourier.com/politics/fraudulent-emails-backing-south-carolina-utility-sale-still-being-sent-to-lawmakers/article_63bcc09e-1c02-11e8-84dc-97d7df1ee876.html.
[16] Sheppard, Kate. "Lobbyist-Tied Group Accused of Faking Support for Potentially Higher Energy Bills," HuffPost (HuffPost, October 31, 2014), https://www.huffpost.com/entry/solar-energy-policy-wisconsin_n_6084604.
[17] Sangiacomo, Michael. "Investigation Urged over Nexus Support Letters." Cleveland.com, September 16, 2016.
https://www.cleveland.com/metro/2016/09/nexus_pipeline_opponents_urge_us_postal_service_to_investigate_lobbying_group_photos.html.

3. **Enforcement:** Policymakers should set up explicit enforcement regimes, including effective fines for violations, to deter utilities from breaking these rules.

These three categories of changes work best as a three-legged stool. Updated, clearer rules can help avoid some violations, but absent proper disclosure mechanisms, some utilities will continue to break those rules and charge customers for political activities if they think no one will find out about it.

Even clearer rules paired with stronger disclosure mechanisms won't be enough without enforcement mechanisms. If the only consequence of being caught breaking the rules is that a utility has to refund customers without penalty, that provides very little deterrent. It would be as if every time the police stopped a bank robbery, they simply asked the robber to return the money to the vault, and then walk away otherwise unpunished.

The rest of this report details how public utility commissions, state legislatures, FERC, Congress, and other federal agencies can adopt these three mechanisms. Combined, these actions will ensure customers are protected from paying for their utilities' political activities.

III. Public Utility Commissions

Public utility commissions (PUCs) can protect customers from paying for their utilities' political advocacy activities via a portfolio of rules, disclosure, and enforcement reforms.

PUCs are responsible for regulating investor-owned gas and electric utilities in every state and the District of Columbia. That means that they are responsible for determining which of a utility's expenses meet the standard of being "just and reasonable" and which reasonably relate to the cost of service. Utilities may charge those expenses to ratepayers; shareholders must foot the bill for anything else.

Recoverable costs are often referred to as "above-the-line" costs; non-recoverable costs are often referred to as "below-the-line" costs. PUCs adjudicate these issues and others during rate cases, which usually take place when a utility applies to the PUC to raise customers' rates - often every few years but sometimes more frequently. Some states require rate cases on a set schedule.

PUCs form the front line to protect customers from being forced to pay for the political operations of their utilities. Most PUCs operate under the general principle that overtly political costs, such as lobbying or making campaign contributions to candidates, are to be treated as below-the-line and not recoverable. But, when not set forth clearly in law, those principles may not be set in hard-and-fast rules, and they are often vague or narrow in scope, covering only specific kinds of political influence efforts, and not others. In some cases, PUCs may simply lose track of years-earlier precedents that they once set about whether certain political costs were eligible for recovery or not.

Generally, most PUCs do not require utilities to provide enough data to allow them to determine if they are following the existing rules or not. As a result, the rules that do exist are often not followed appropriately by regulated utilities. For example, an initial analysis conducted by E9 Insight found that information about utilities spending on trade associations that are often political in nature was "burdened" in 41 states and the District of Columbia. In those states, "discovery is required to obtain any [dues] information, without mechanisms for full disclosure of itemized trade group expense details."[18]

Finally, when PUCs, commission staff, or other intervenors in a rate case do catch violations, commissions do not penalize the utilities. This means there is little to deter a utility from testing or even ignoring altogether the boundaries of charging customers for political activities. Even if the utility gets caught and can't argue its way out of it

[18] See FERC Docket No. RM22-5-000, comments from E9 Insight.

thanks to a vague rule, the worst-case scenario generally would be that they have to issue a refund.

Rulemaking

1. **PUCs should explicitly bar utilities from spending customers' money on politics, using clear and common-sense definitions of political activity.**

   PUCs should pass new rules, or strengthen existing ones, barring utilities from recovering from customers any expenses associated with political activities, including spending in the below categories. The prohibition should include expenses on outside consultants and vendors, as well as on the salaries and expenses of utility employees whose responsibilities involve the categories below.

   A. Expenses for the purpose of influencing regulation or legislation directly or indirectly, at all levels of government (municipal, state, federal).

   B. Expenses for the purpose of influencing public opinion about policy issues or about the reputation of the company itself.

      Commissions can still allow cost recovery of marketing expenses related to essential communications with customers to achieve performance, like safety notices, energy saving goals, or conservation and demand response alerts. They should distinguish between these and advertising to influence public opinion or institutional advertising to build good will toward the utility, all of which are inherently political.

      Examples:

      i. The New Mexico PRC enacted a rule in 2001, expanding on earlier rules from 1979 and 1988, which banned the recovery from all advertising that promote usage, promote sales, "seek to establish a favorable public image of the company," "advocate a position," or "justify a request for higher rates" or higher plant or service costs.[19]

      ii. The Nevada PUC enacted an order in 1981 that no utility can recover "promotional or political advertising," whether "direct or indirect," from customers.[20]

[19] N.M. Administrative Code R. § 17.3.350. https://www.srca.nm.gov/parts/title17/17.003.0350.html
[20] Nev. Administrative Code § 704.290. https://www.leg.state.nv.us/nac/nac-704.html#NAC704Sec290

C. Legal expenses for the purpose of engaging with the PUC itself. PUCs currently generally permit utilities to recover all of the costs of "regulatory commission expenses," for all types of regulatory matters, including expenses to outside law firms and economic consultants, which can be exorbitant. But all regulatory matters are inherently political matters which touch on a host of public policy issues. Utility customers should not have to subsidize the utility's efforts to convince regulators to raise their rates.

   It may be appropriate for PUCs to allow utilities to recover the costs specifically of proceedings in which the PUC is requiring the utility's mandatory participation, such as rate cases required by statute or initiated by the PUC. However, PUCs may still want to at least cap those expenses at a level that they determine to be just and reasonable for ratepayers to cover, and to force shareholders to pay for an escalating share of the expenses after that cap, both to protect ratepayers and to incentivize some basic cost controls at the utility.

   For many matters before a PUC, a utility's participation is optional. PUCs should presumptively require shareholders to pay for that participation. A utility can always argue, with appropriate evidence, why its customers benefit from that spending, if they so choose.

   For proceedings before any other regulatory agency, such as a state or federal environmental regulators, PUCs should require shareholders to pay for 100% of those costs.

D. Payments made to 501(c)(6) trade associations in their entirety. As EPI and others have documented, most utility trade associations are inherently political;[21] any apolitical functions are impossible to segregate without detailed disclosure, if at all. At minimum, PUCs should place the burden of proof on utilities by requiring them to disclose any apolitical costs in detail if they wish to segregate and recover them.

   Examples:

   i. The New Mexico PRC enacted a rule in 2001 which banned the recovery of all dues in trade associations other than those associated with employees' professional education.[22] For other dues, the utility can only recover the costs if it "affirmatively demonstrates

[21] Kasper, Matt, David Pomerantz, and David Anderson. "Paying for Utility Politics: How Ratepayers Are Forced to Fund the Edison Electric Institute and Other Political Organizations." Energy and Policy Institute, May 2017. https://www.energyandpolicy.org/utility-ratepayers-fund-the-edison-electric-institute/.
[22] N.M. Administrative Code R. § 17.3.350. https://www.srca.nm.gov/parts/title17/17.003.0350.html

that such expenditures are reasonable." The rule requires "full and adequate accounting" as a prerequisite to allowance, and notes that "maintenance of corporate good will or good corporate citizenship is an insufficient reason."

ii. The Kentucky Public Service Commission[23] and California Public Utilities Commission[24] each recently denied utilities' requests to recover the costs of their dues to the Edison Electric Institute in a rate case.

iii. The Minnesota PUC disallowed Otter Tail's attempt to charge customers for its dues to the Lignite Energy Council, a trade association which advocates on behalf of coal mining interests in North Dakota. The PUC also denied recovery for dues to the Utility Air Regulatory Group, a now defunct legal service that existed to challenge environmental regulations, and two groups based out of the McGuireWoods law firm that Otter Tail described as its successors.[25]

The Kentucky, California and Minnesota decisions required exhaustive arguments by consumer advocates, and there is no guarantee that the same precedent will be applied in future rate cases. Other commissioners might choose to rule differently in future rate cases as well. A standing rule would be more durable.

E. Payments made to 501(c)(3) and 501(c)(4) non-profit organizations.

Many PUCs currently do not allow recovery of charitable expenses, but some do. And even in the states where PUCs do not allow recovery either by rule or precedent, utilities commonly misallocate or attempt to recover charitable expenses from rates.

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[23] Morehouse, Catherine. "Kentucky Regulators Deny Utility Request to Recover EEI Dues. A Similar Question Sits before FERC." Utility Dive, July 2, 2021. https://www.utilitydive.com/news/kentucky-regulators-deny-utility-request-to-recover-eei-dues-a-similar-que/602757/.

[24] Kasper, Matt. "Michigan PSC Rebuffs Judge Recommendation, Allows DTE Energy to Force Customers to Pay $1.2 Million in EEI Dues." Energy and Policy Institute, September 12, 2019. https://www.energyandpolicy.org/michigan-psc-allows-dte-energy-to-force-customers-to-pay-eei-dues/.

[25] Minnesota PUC: In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, Docket No. E-017/GR-20-719, Findings of Facts, Conclusions and Order, at 24 (February 1, 2022). https://efiling.web.commerce.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId=%7B30EBBA7E-0000-C91C-8E28-7AD20885DE24%7D&documentTitle=20222-182349-01

Examples:

i. The California PUC initially allowed recovery of certain donations in a 2019 San Diego Gas & Electric rate case until a consumer advocate, The Utility Reform Network, successfully convinced the CPUC in a rehearing to keep donations out of rates.[26]

ii. The North Carolina Utilities Commission adopted in 2021 its Rule R12-13, which now bans utilities from charging customers for charitable contributions (as well as political or public relations advertising and lobbying.)[27]

2. **PUCs should ban utilities from charging customers for political expenses procured by central service companies and billed back to the utilities.**

   Some utilities are parts of sprawling holding companies which - in addition to multiple utilities in different states - also contain within them "central service companies." These service companies essentially act as internal general contractors for the larger corporate empire. They can handle operations like human resources and administrative functions. They also can be the part of the company responsible for procuring outside vendors to conduct political advocacy.

   For example, the FirstEnergy Service Company was the subsidiary that made many of the dark-money payments that FirstEnergy used to execute its bribery scheme in Ohio. An audit by federal utility regulators found that at least a portion of the bribe payments were allocated among all ten of FirstEnergy's regulated public utilities and included in customer rates.[28] Research by EPI further revealed how customers of FirstEnergy utilities across 5 states may be on the hook for as much as $137 million in "external affairs" costs their utilities paid to the FirstEnergy Service Company over a three-year period when the bribery scheme was underway.[29]

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[26] California PUC: Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Update its Electric and Gas Revenue Requirement and Base Rates, Decision 20-07-038, at 12 (July 20, 2020)
https://www.documentcloud.org/documents/20536439-cpuc-rehearing-ruling-in-san-diego-gas-and-electric-2019-rate-case#document/p12/a2170672

[27] NC Utilities Commission: In the Matter of Petition for Rulemaking Proceeding to Consider Proposed Rule to Establish Procedures for Disclosure and Prohibition of Public Utility Lobbying, Advertising and Other Expenditures, Order Adopting Amendments to Commission Rules R12-12 and R12-13 (August 10, 2021)
https://starw1.ncuc.gov/ncuc/ViewFile.aspx?NET2022&Id=43ed1ae2-e34a-417d-a795-f2123b08a48e

[28] FERC Audit Report of FirstEnergy, Docket No. FA19-1-000, page 17. February 4, 2022
https://www.documentcloud.org/documents/21197493-ferc-enforcement-audit-of-firstenergy#document/p21/a2078102

[29] Anderson, Dave. "13 FirstEnergy Utilities Paid $144 Million for External Affairs to Service Company Involved in Ohio Bribery Scandal." Energy and Policy Institute, May 4, 2021.
https://www.energyandpolicy.org/firstenergy-service-company/.

In another example, Southern Company Services was the entity within that utility holding company that procured and paid for climate denial efforts for many years.[30] Those payments went to groups like "Americans for Balanced Energy Choices," "Center for Energy and Economic Development," and the "American Coalition for Clean Coal Electricity." Southern Company Services also was Southern's conduit of money to the public relations firm the Hawthorn Group, a climate-denial effort called the Global Climate Coalition, and the climate-denying efforts of Dr. Wei-Hock "Willie" Soon, a physicist at the Harvard & Smithsonian Center for Astrophysics best known for his adherence to the disproven theory that climate change is largely caused by solar variation. Southern reported some of the over $60 million that it paid to firms and groups involved in climate disinformation between 1993 and 2004 as above-the-line expenses recoverable from customers of Southern utilities.[31]

PUCs often view their authority over central service companies as being limited to service companies' transactions with the affiliated utilities within the jurisdictions that they directly regulate. Federal and state utility regulators rarely coordinate audits and investigations of service companies, meaning they often don't have access to the information needed to effectively regulate service companies that generally operate across jurisdictional borders.

For example, nearly two years ago FirstEnergy disclosed in an annual report to the SEC that for over a decade it misused ratepayer money for improper "vendor" payments that included political and lobbying expenditures.[32] A patchwork of limited audits and investigations by FERC and state PUCs in Maryland,[33] Ohio[34] and Pennsylvania[35] have revealed some details about FirstEnergy's misuse of ratepayer money, but the company's attorneys have been largely successful in using jurisdictional barriers and confidentially claims to keep key internal documents and information secret from regulators.[36] To

[30] Anderson, Dave. "Southern Company Knew." Energy and Policy Institute, June 10, 2022. https://www.energyandpolicy.org/reports/southern-company-knew-climate-change/
[31] Ibid.
[32] Anderson, Dave. "Money Trail in FirstEnergy Corruption Scandal Leads Outside Ohio." Energy and Policy Institute, July 6, 2021. https://www.energyandpolicy.org/firstenergy-corruption/.
[33] Kurtz, Josh. "Ohio Bribery Scandal Hits Home in Md. - and Utility Customers May Be Footing the Bill." Maryland Matters, April 21, 2022. https://www.marylandmatters.org/2022/04/21/ohio-bribery-scandal-hits-home-in-md-and-utility-customers-may-be-footing-the-bill/.
[34] Jeremy Pelzer, cleveland.com. "HB6 Audit: FirstEnergy Gave Millions in Questionable Payments to Affiliates of Cleveland Businessman Tony George." Cleveland Plain Dealer, August 3, 2021. https://www.cleveland.com/open/2021/08/hb6-audit-firstenergy-gave-millions-in-questionable-payments-to-cleveland-businessman-tony-george.html.
[35] Pennsylvania PUC: FirstEnergy Pennsylvania Companies Management and Operations Audit. Dockets D2020-3023106, D2020-3023107, D2020-3023108, D2020-3023109. Issued March, 2022. https://www.puc.pa.gov/pcdocs/1748700.pdf
[36] Bischoff, Laura. "FirstEnergy Says It's Changed but the Utility Still Fights for Secrecy." Columbus Dispatch, March 31, 2022. https://www.dispatch.com/story/news/2022/03/31/firstenergy-says-its-changed-but-utility-still-fights-secrecy/7041593001/.

ensure that utilities are not billing customers for the political activities procured by central service companies, PUCs should take two steps:

i. The PUC should make explicit that its prohibition on utilities' charging customers for political activities extends to any payments that the utility makes to a central service company.

ii. The PUC should ban service companies from incurring or allocating any expense to an operating company without the knowledge and authorization of the regulated utility. They should require the regulated utility to file those authorizations with the PUC for annual review and approval in a proceeding where public stakeholders will have an opportunity to review a line-item schedule of the payments and object to charges. That process will prevent regulated utilities from claiming that they did not know how the service company was spending their customers' money. A Public Utilities Commission of Ohio audit found, for example, that FirstEnergy's Ohio utilities "have little insight into the allocated charges they are receiving from FirstEnergy Service Company."[37]

3. **PUCs should waive confidentiality and privilege claims in cases involving corruption or bribery:**

   Despite FirstEnergy admitting to a federal crime in Ohio, the company's lawyers have succeeded in blocking and slowing the public disclosure of evidence of wrongdoing in multiple regulatory proceedings through confidentiality, trade secret, and privilege claims.[38]

   PUCs should require utilities to sign agreements that they will waive protective agreements, confidentiality, jurisdictional claims, and privilege claims during investigations or audits that involve criminal violations, including corruption and bribery. This should be a price utilities pay for the privilege of serving ratepayers in state-mandated monopoly service territories, and for the guaranteed profits that they enjoy as a result. Reasonable accommodations could be made to protect whistleblowers, witnesses, and evidence involved in ongoing criminal investigations, but monopoly utilities should never be able to use "trade secret" and other confidentiality claims to hide details of criminal wrongdoing from the public.

4. **Elected PUCs should bar contributions and gifts from utilities and affiliates**

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[37] PUC of Ohio: A compliance audit of the FirstEnergy operating companies with the corporate separation rules of the PUCO. Sept. 13, 2021. https://www.documentcloud.org/documents/21061747-puco-compliance-audit-firstenergy-corporate-separation-rules-2021

[38] Pelzer, Jeremy. "FirstEnergy Official: Larry Householder, Sam Randazzo, Ex-Company Executives Conspired to Break Federal Law." Cleveland.com, August 25, 2022. https://www.cleveland.com/news/2022/08/firstenergy-official-larry-householder-sam-randazzo-ex-company-executives-conspired-to-break-federal-law.html.

In states with elected utility regulators, commissions should pass rules barring commissioners from accepting campaign contributions or gifts from utilities, as well as their employees, affiliates, and any known vendors like law firms or contractors over a certain threshold. Some elected state commissions, like Arizona and Georgia, have ethics rules barring the acceptance of contributions from regulated entities, though none extend those rules to affiliates.

In 2018, Georgia Public Service Commission incumbents Tricia Pridemore and Chuck Eaton each received approximately two-thirds of their campaign contributions from people or companies associated with regulated entities such as Georgia Power, according to an Energy and Policy Institute analysis of campaign finance records.[39]

Some states, like Louisiana, have no rules barring commissioners from accepting campaign contributions, even directly from regulated entities. At least 77% of one PSC commissioner's fundraising during one finance period of the 2022 election, and 67% of another's, came from companies or people with ties to entities that have business before the PSC, according to an analysis by The Advocate, a local news outlet.[40]

Prohibitions on commissioners accepting utility money would not prevent utilities from spending to influence the election of their regulators via independent expenditure campaigns or dark money efforts. Arizona Public Service's parent company Pinnacle West, for instance, infamously used both tactics in the 2014 and 2016 election cycles to influence the Arizona Corporation Commission elections.[41] [42] Still, banning direct contributions from regulated utilities is an obvious and necessary reform, and increased transparency for utilities' political expenditures would allow the public to know when utilities are bypassing bans on PUC campaign contributions through independent expenditures or other means.

(See State Legislatures: "Rulemaking action by statute" for campaign finance reform measures that state legislatures can pass on page 29.)

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[39] Tait, Daniel. "Big-Dollar Contributors with Ties to Georgia Power and Southern Company Bet on Pridemore, Eaton for Georgia PSC." Energy and Policy Institute, September 12, 2019. https://www.energyandpolicy.org/big-dollar-contributors-with-ties-to-georgia-power-southern-company-bet-on-pridemore-eaton-for-georgia-psc/.
[40] Karlin, Sam. "In PSC Races, Challengers Target Money Flooding in from Regulated Utilities, Lobbyists." The Advocate, October 14, 2022.
[41] Randazzo, Ryan. "APS Acknowledges Spending Millions to Elect Corporation Commission Members, after Years of Questions." The Arizona Republic. The Republic | azcentral.com, March 29, 2019. https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/.
[42] Fischer, Howard. "Utility Spends $3.5 Million to Keep Arizona Corporation Commission All-GOP." Tucson.com. Capital Media Services, November 3, 2016. https://tucson.com/news/local/govt-and-politics/elections/utility-spends-3-5-million-to-keep-arizona-corporation-commission-all-gop/article_d80b85aa-4dd0-5516-a002-7d012f5ef7c2.html.

Disclosure

The new PUC rules suggested in this report would close loopholes to ensure that utilities are not charging their customers for their political activities. But in many cases, utilities are not following the existing rules to prevent political cost recovery. A lack of disclosure mechanisms makes it impossible for even a well-intentioned PUC to learn about violations.

In many states, the only time a utility has to open its accounting books to show how it is spending money is during a rate case, and even then are not required to show detailed spending accounts for many expenses unless forced to do so by formal third-party intervenors in a legal discovery process. Intervention in a rate case, and engaging in discovery, are expensive, time-consuming processes that require legal support. Utilities fight against or ignore discovery questions that they don't want to answer.

To ensure that utilities are actually following the rules against political cost recovery, PUCs have the authority and obligation to adopt regular, mandatory disclosure practices which target these expenses. These include:

1. **Detailed disclosure of all political expenses**

   PUCS should require the disclosure, both in annual reporting and in all rate cases, of the following expenses which relate to political activities. Disclosure should include outside contracts as well as the salaries and expenses of in-house utility staff who work on any of these areas:

   A. Expenses for the purpose of influencing regulation or legislation directly or indirectly.

   B. Expenses for the purpose of influencing public opinion about policy issues or about the company's reputation.

   C. Regulatory commission expenses, with specificity about how much and how the company spent on different proceedings.

   D. Contributions to 501(c)(3) and 501(c)(4) non-profits, including those spent by utilities' affiliated 501(c)(3) charitable foundations.

   E. Any litigation that utilities file which seeks to overturn rules or statutes.

Examples:

i. The California PUC's General Order 77-M requires utilities to annually disclose trade association dues and charitable donations, as well as all payments to both in-house and external attorneys, though the disclosures do not require any level of detail about the payments.[43]

ii. The Michigan PSC's Form P521 requires utilities to annually disclose the nature, payee, and amount for expenses reported in Accounts 426.1 (charitable donations) and 426.4 (certain civic, political, and related activities).[44]

iii. The Texas PUC's §25.77 rule requires utilities to annually disclose all payments over $500 for:[45]

1) business gifts and entertainment;
2) institutional, consumption-inducing, and other advertising expenses;
3) public relations expenses;
4) legislative matters, including advocacy before any legislative body;
5) representation before any governmental agency or body, including municipalities;
6) legal expenses not accounted for in other categories of this subsection;
7) charitable, civic, religious, and political contributions and donations;
8) all dues or membership fees paid, including an identification of that portion of those dues or membership fees paid to a trade association, industry group, or other organization formed to advance, or whose activities are or become primarily directed toward advancing, utility interests, which relate to activities listed in paragraphs (1)-(7) of this subsection if known following reasonable inquiry by the utility; and
9) other expenses as deemed appropriate by the commission.

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[43] California PUC, General Order 77-M. https://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/66148.htm.
[44] Michigan PSC, Form P521. https://www.michigan.gov/mpsc/regulatory/forms.
[45] 16 Tex. Admin. Code §25.77. https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.77/25.77.pdf.

2. **Disclosure of frequently abused above-the-line accounts**

Most of the political expenses above, like influencing legislation or charitable contributions, are typically ordered by PUCs to be "below-the-line," or ineligible for cost recovery. Yet regulatory audits, which are vanishingly rare and often occur only after scandals, have found that utilities often "mis-allocate" these costs to above-the-line accounts and recover them.

The Illinois Commerce Commission ruled that ComEd used $38 million of customer money toward the influence scheme that ultimately led to the indictment of Illinois House Speaker Mike Madigan and a deferred prosecution agreement between the Department of Justice and ComEd, with the utility paying a $200 million fine to avoid trial.[46]

To prevent this kind of fraudulent recovery, PUCs should require mandatory, annual, line-item disclosure of frequently abused "above-the-line" accounts as well.

Disclosures should show the unredacted billing amounts, billing dates, payees (including vendors if applicable), and explanations of the purpose of the billing in detail sufficient to describe the purpose of the cost. Above-the-line expenses where utilities frequently dump political costs, and which should require this disclosure, include:

A. *Administrative and General Salaries* that the utility files under account **920** of the FERC Uniform System of Accounts (USoA).

B. *Outside Services* that the utility files under account **923** of the FERC USoA.

C. *Regulatory Commission* expenses that the utility files under account **928** of the FERC USoA.

D. All *General Advertising*, *Public Relations,* and *Marketing* expenses that the utility files, including but not limited to expenses filed under account **930.1** of the FERC USoA. Utilities should provide a more detailed explanation of the reason behind each expense item. PUCs should not accept non-detailed responses such as "general marketing, " "media placement," or "creation of advertising materials."

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[46] Long, Ray. "Proposal Calls for Comed to Pay $38 Million Back to Ratepayers for Scandal Tied to Michael Madigan Indictment." Chicago Tribune, June 15, 2022. https://www.chicagotribune.com/politics/ct-comed-scandal-38-million-icc-20220614-ltg7v4s3djfu7bmmu4usfb6veu-story.html.

E. Miscellaneous general expenses that the public utility files under account **930.2** of the FERC Uniform System of Accounts.

Some PUCs do require annual disclosure of some of this information, for example:

- The Texas PUC's §25.77 rule requires utilities to file an annual report listing "institutional" advertising expenses and public relations expenses.[47]
- The Michigan PSC requires in Form P521 that utilities include a list of outside services employed in their annual reporting forms.[48]
- A running annual subpoena by the Arizona Corporation Commission has requested information from utilities, including all expenses related to advertising, public relations and marketing, in addition to other key information. (See "Arizona Corporation Commission annual inquiries"..., page 23.)

3. Disclosure of all salaried positions involved in political or public influence

PUCs should require disclosure, annually and in all rate cases, of information for all employees related in any way to political or public influence, including people related to the following functions:

A. Corporate Giving
B. Economic/Community Development
C. Public/Government/Policy/Regulatory Affairs
D. Communications
E. Strategic Partnerships
F. External Relations
G. Community Relations

The filing should include title, total compensation, and the percentage of compensation included in rates. The utility should include a job description for each position. The Arizona Corporation Commission, led by Sandra Kennedy, began requesting this information from Arizona utilities in annual inquiries beginning in 2019.[49]

[47] 16 Tex. Admin. Code §25.77. https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.77/25.77.pdf.
[48] Michigan PSC, Form P521. https://www.michigan.gov/mpsc/regulatory/forms.
[49] Smyth, Joe. "Arizona Regulator Investigation Unveils Arizona Public Service Company's Political Spending." Energy and Policy Institute, August 4, 2022. https://www.energyandpolicy.org/arizona-regulator-investigation-unveils-arizona-public-service-companys-political-spending/.

Responses from APS showed that the utility charges 100% of the salaries of several employees focused on public policy and regulatory compliance to ratepayers, including "Senior Vice President Public Policy," "GM Regulatory Affairs & Compliance," "Director State Affairs and Compliance," and "Director Federal Affairs & Compliance."[50]

Several other employees' salaries are mostly charged to ratepayers, including several focused on lobbying like "Federal Affairs Representative," "Vice President Federal Affairs," and "Public Affairs Managers."

Out of the 56 job titles that APS listed, 50% or more of the salaries for 43 of the job titles were included in customer rates.

Arizona Corporation Commission annual inquiries provide a useful template for PUCs

The Arizona Corporation Commission, led by former Commissioner Sandra Kennedy, began requesting information from Arizona Public service about its political spending in annual inquiries beginning in 2019.

The ACC's annual inquiries provides a template for some of the enhanced disclosure questions that PUCs can use to unearth utilities' practices of charging customers for political costs. The inquiry[51] began with APS, stemming from that company's secretive spending to influence ACC elections in 2014, but has since expanded to other utilities in the state.[52]

In addition to the information about salaried positions involved in public policy, the inquiries also requested the following disclosures, along with descriptions of the expenditures:

1. All political contributions, including donations to candidates, PACs, parties, and independent expenditures, ballot measures, and 527 groups;
2. All contributions to 501(c)(3) or 501(c)(4) groups;

[50] Ibid.
[51] Arizona Corporation Commission: In The Matter Of The Commission's Investigation Into The Political Spending Of Arizona Public Service Company And Its Affiliates, Including Pinnacle West Capital Corporation. Docket No. E-01345a19-0043, Commr. Kennedy Letter to Jeff Guldner. Feb. 28, 2022. https://www.documentcloud.org/documents/22057141-commissioner-kennedy-questions-of-aps
[52] Arizona Corporation Commission: In The Matter Of The Campaign Contribution Practices Of Public Service Corporations And Other Entities That Appear Before The Commission. (Docket No. Au-00000a-15-0309), Commr. Kennedy Letter to Jeff Guldner. Sept. 6, 2022. https://docket.images.azcc.gov/E000020962.pdf

3. All contributions to trade associations that may have been used for political activities;
4. All lobbying expenses;
5. All charitable donations;
6. All advertising and marketing.

In past inquiries of only APS, Kennedy had also requested that the company provide information about the total number of former Commissioners and Commission Staff that the utility has retained in any capacity, including as contractors or consultants.[53] Commissions seeking information about revolving door patterns might be interested in asking a similar question of regulated entities.

The inquiries about APS's political spending, and the political spending by its parent company Pinnacle West Corporation, began in 2015, when Commissioner Robert Burns subpoenaed information from APS about its spending during the 2014 ACC elections. APS refused to comply, and the other four members of the ACC - including the regulators that APS had spent to elect - refused to join Burns in voting to enforce the subpoena.

The question became moot in 2019, when Kennedy, who was elected in 2018, joined Burns and a third commissioner elected that year to form a majority that would subpoena the information.

In 2022, the Supreme Court of Arizona ruled that a single Arizona commissioner could enforce a subpoena on a regulated utility.[54]

4. **Annual disclosure, with subpoenas if necessary, of parent company and central service company political spending**

   Utilities often make political expenditures out of the coffers of their parent holding company; that can shield the expenditures from the oversight of a state regulator.

   A PUC generally will not be able to *stop* the parent company from spending on political advocacy, but they can at least attempt to require disclosure to support their oversight of holding company and service company cost allocations,

[53] Arizona Corporation Commission: In The Matter Of The Commission's Investigation Into The Political Spending Of Arizona Public Service Company And Its Affiliates, Including Pinnacle West Capital Corporation. Docket No. E-01345a19-0043, Commr. Kennedy Letter to Jeff Guldner. Feb. 28, 2022.
[54] Burns v. Arizona Public Service Co. et al, https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2022/CV210080PR.pdf.

transactions, and service agreements involving the affiliated utilities they regulate. PUCs need to see a full picture of political costs being allocated by the holding and services companies, not just what little information about those costs may be shared with affiliated regulated utilities, to protect customers from paying for these expenses.

In Michigan, for example, when the utility Consumers Energy had been found to have spent over $43 million on 501(c)(4) organizations that worked to influence election outcomes,[55] the PSC approved a settlement agreement - one that Consumers Energy supported - that banned the *regulated utility* from spending any corporate funds on 501(c)(4) organizations or political 527 groups.[56]

However, because the settlement did nothing to prevent Consumers Energy's parent company, CMS Energy, from spending on politics, it largely would have no impact beyond cosmetic accounting changes.[57]

The Michigan PSC may not be able to force an unregulated parent company like CMS Energy to stop spending on politics, but it can attempt to compel disclosure of the company's spending via its subsidiary, Consumers Energy. (It has not done so.)

Mandatory parent company and service company disclosure would at least prevent those entities from spending in the dark with impunity, and precedent exists for it. In Arizona, the ACC has compelled political spending disclosures from Pinnacle West Capital Corporation, the parent company of the regulated entity Arizona Public Service. (See "Arizona Corporation Commission annual inquiries"..., page 23.)

Despite admitting that it committed a federal crime, FirstEnergy Corp. has avoided full disclosure of its political spending during the 2016-2020 period that has been the focus of criminal investigations. If the utility parent company, service company, and affiliates had to disclose this information to regulators

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[55] Kasper, Matt. "Consumers Energy Contributed $43.5 Million over Four Years to Citizens for Energizing Michigan's Economy." Energy and Policy Institute, September 12, 2019. https://www.energyandpolicy.org/consumers-energy-contributed-43-million-dollars-to-citizens-for-energizing-michigans-economy/.
[56] Michigan PSC: In Re: Case No. U-20134 – In the Matter of the application of Consumers Energy Company for Authority to increase its rates for the generation and distribution of electricity and for other relief. Settlement Agreement. Dec. 18, 2018. https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000003HF2pAAG.
[57] Oosting, Jonathan. "Consumers Energy: Settlement Won't Stop Political Spending by Parent Company." The Detroit News. The Detroit News, February 27, 2019. https://www.detroitnews.com/story/news/local/michigan/2019/02/26/consumers-settlement-wont-stop-political-spending/2996277002/.

annually, public exposure of the company's dark money political payments may have happened earlier in the years-long run of illegal activities, or may have deterred some of them altogether. Today, the PUC's efforts to probe FirstEnergy's misuse of ratepayer money in connection with the scheme have been limited and obstructed by the lack of transparency from the parent and service company.

Specifically, PUCs should take the following steps with regard to parent companies and central service companies:

A. PUCs should require regulated utilities to disclose annually and in all rate cases their parent companies' and central service companies' political spending of all types outlined here, including spending on electoral campaigns, advertising, marketing, lobbying, trade associations and 501(c)(3) and 501(c)(4) non-profits. Disclosures should include itemized expenditures with names of vendors and the nature of the expenses described in detail.

B. For central service companies, the PUC should require the regulated utility to affirm that the service company or parent company is not billing it for any of the political costs disclosed.

C. If utilities refuse to disclose central service or parent company expenditures, PUCs should disallow cost recovery for all central service company expenses in the next rate case.

5. PUCs should require disclosure of political spending for cooperative and municipal utilities

While many PUCs don't regulate the rates of electric cooperatives and municipal utilities in the same way that they regulate the rates of investor-owned utilities, those utilities still spend ratepayer money on politics.

PUCs should require electric cooperatives and municipal utilities to publish details about their spending on lobbying, political campaigns, and public relations, both directly and through their trade associations and wholesale power providers.

If cooperatives or municipal utilities challenge the PUC's authority to require disclosure of that information, the PUC should ask the state legislature to clarify that PUCs explicitly have that jurisdiction. (See State Legislatures: "Disclosure by statute," page 32.)

Enforcement

When PUCs catch utilities improperly charging customers for political costs, they must respond with significant fines and penalties. The pervasiveness of the problem requires deterrence beyond clearer rulemaking and disclosure. Despite all PUCs having enforcement functions, few use them for these purposes.

In the rare cases where investigations or audits have proven that utilities have improperly charged customers for political costs, the action taken by the PUC - if any - has, with few exceptions, been to mandate that the utility merely refund customers for those expenses with interest.

"By failing to impose penalties the commission encourages the very bad acts for which it finds SoCalGas guilty"
- California's Public Advocates Office

Even when the Illinois Commerce Commission found in its investigation of ComEd that the utility charged customers for activities that led to criminal behavior, its only proposed remedy was to have ComEd refund the misallocated money to ratepayers.[58] A PUCO audit involving payments related to FirstEnergy's Ohio scheme recommended millions of dollars in refunds and also barred recovery of millions more in future rates, but again there was no recommendation of a fine or penalty beyond that.[59]

Refunds without penalties provide little deterrent for the utility not to charge political costs to ratepayers. If they do not get caught, then they get to enjoy ratepayer-subsidized political activity. If they do get caught, a refund without a penalty leaves them no worse than if they had properly booked the costs to shareholders in the first place.

The only recent example of a PUC issuing a penalty to a utility for charging customers for political activities occurred in California, where the CPUC fined SoCalGas $10

[58] Long, Ray. "Proposal Calls for Comed to Pay $38 Million Back to Ratepayers for Scandal Tied to Michael Madigan Indictment." Chicago Tribune, June 15, 2022. https://www.chicagotribune.com/politics/ct-comed-scandal-38-million-icc-20220614-ltg7v4s3djfu7bmmu4usfb6veu-story.html.
[59] Balmert, Jessie. "FirstEnergy Distribution Companies Tried to Charge Customers $24.5 Million for Questionable Expenses." The Enquirer. Cincinnati Enquirer, August 4, 2021. https://www.cincinnati.com/story/news/politics/2021/08/03/puco-audit-firstenergy-24-5-million-poorly-documented-expenses/5467554001/.

million for charging its anti-electrification political activities to customers in accounts that were supposed to be for energy efficiency spending.[60]

That fine was far less than advocates had suggested; California's Public Advocates Office (PAO) had recommended a fine of $124 million.

In a separate case where SoCalGas charged pro-gas, anti-electrification political costs to ratepayers, the PAO recommended a fine of $255 million. The Commission ordered only a refund in that case. "By failing to impose penalties the commission encourages the very bad acts for which it finds SoCalGas guilty," a PAO spokesperson said of that refund.[61]

To create adequate deterrents, PUCs should:

1. Pass rules noting that any violations of political cost recovery standards would lead to financial penalties, beyond refunds.
2. Set clear expectations that penalties will be correlated to the expenditure itself, and will be high enough to ensure the integrity of the PUC's prohibitions on cost recovery of political spending. They could, for example, make clear that any violations will result in a penalty no less than the amount that the utility improperly booked to customers, and up to 20 times that amount. A utility caught spending $1 million of customer money on political activities would face a fine of $1 million at a minimum, and $20 million at a maximum, on top of the utility's return of the misallocated money (with interest) to customers.

[60] Gotfredson, David. "Sempra Company Fined $10 Million for 'Unlawful' Lobbying." cbs8.com, February 22, 2022. https://www.cbs8.com/article/money/amped/sempra-fined-10-million-for-unlawful-lobbying/509-37f63dc0-9945-4661-b7c0-f57a64569254.
[61] Roth, Sammy. "SoCalGas should be fined $255 million for fighting climate action, watchdog says." Los Angeles Times, November 6, 2020. https://www.latimes.com/environment/story/2020-11-06/southern-california-gas-company-climate-fine-recommended.

IV. State Legislatures

State legislatures can protect customers from paying for their utilities' political advocacy activities via a portfolio of rules, disclosure, and enforcement reforms.

State law governs the regulatory authority and responsibilities of each public utility commission. Legislators can write or amend statutes requiring PUCs to take many of the above actions in rulemaking, disclosure and enforcement. While legislation is not necessary for PUCs to take many of the actions above, it can remove uncertainty, place an affirmative onus on PUCs to act, and guarantee continuity in the face of new PUC appointments or elections.

Legislators can also appropriately budget PUCs to enable better oversight and enforcement, and can craft tighter campaign finance rules for utilities.

Rulemaking action by statue

1. Legislators should pass laws banning cost recovery for any political activities by the utility, including influencing regulation or legislation of all types, influencing public opinion about policy matters or the company itself, regulatory commission advocacy, trade association dues, charitable giving, and litigation seeking to overturn rules or statutes. See Public Utility Commissions: "Rulemaking," page 12, for greater detail on each of these categories.

   Examples:

   A. **New York** passed a law in 2021, SB 1556, prohibiting utilities from recovering from customers the costs of any trade associations that engage in any legislative lobbying.[62] Even if a trade association conducts lobbying as only a small percentage of its overall activities, a utility could not charge ratepayers for *any* portion of its dues to that group.

   B. **New Hampshire** passed a law in 2019, SB 206, which says that the PUC "shall exclude the cost of lobbying and political activity from the rates of public utilities."[63] The definitions referenced for lobbying and political activity are narrow and could be read to exclude political influence tactics

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[62] N.Y. Pub. Serv. Law § 114-A. Amended by New York Laws 2021, ch. 394,Sec. 1, eff. 8/2/2021. https://casetext.com/statute/consolidated-laws-of-new-york/chapter-public-service/article-6-provisions-affecting-two-or-more-kinds-of-the-public-service-and-the-persons-and-corporations-furnishing-such-service/section-114-a-rates-not-to-include-cost-of-legislative-lobbying.

[63] N.H. Rev. Stat. § 378:30-e Exclusion of Lobbying and Political Activity Costs From Rates. https://www.lawserver.com/law/state/new-hampshire/nh-statutes/new_hampshire_revised_statutes_378_30-e.

geared at local governments or the federal government, but the restrictions do explicitly apply "regardless of whether such lobbying or political activity is undertaken directly or indirectly on behalf of a public utility."

In its testimony supporting the bill, the New Hampshire consumer advocate's office noted that the PUC had a prohibition on cost recovery of political activity already in place, but also emphasized the powerful effect of legislative action.[64] The consumer advocate testified that codifying that prohibition would offer greater assurance that the rule would remain in place, and would allow the consumer advocate to speak with legislative authority in settlement negotiations at the PUC when demanding an investor-owned utility carry the full burden of proof in demonstrating that expenses did not go directly or indirectly toward lobbying, issue advocacy, and other political activities.

C. **Illinois** statute bars utilities from charging customers for "any amount expended for political activity or lobbying" as well as "promotional, political, institutional or goodwill advertising."[65]

D. **Iowa** statute bars utilities from charging customers for lobbying, and for legal costs and attorney fees involved in appealing a decision by the Iowa Utilities Board (that state's PUC), though it allows the PUC to approve costs it deems "reasonable." The statute also bars utilities from recovering the costs of advertising, other than advertising which is required or which the Board deems "necessary."[66]

E. **Minnesota** statute bars utilities from charging customers for advertising which is designed to influence public opinion, promote consumption, or promote good will or the utility's image.[67]

Recent examples of legislation that did not pass:

A. **Connecticut** legislators proposed to ban cost recovery of all 501(c)(6) trade association dues in an early draft of a utility reform bill (HB 5203),[68] but that language (see testimony on Section 7) was stricken out of legislation,

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[64] Anderson, Dave. "How Eversource Customers in New Hampshire Unknowingly Fund the Edison Electric Institute." Energy and Policy Institute, October 10, 2019. https://www.energyandpolicy.org/eversource-edison-electric-institute/.
[65] 220 Il. Comp. Stat. § 5/9-224 https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1277&ChapterID=23.
[66] Iowa Code § 476.18 https://www.legis.iowa.gov/docs/ico/chapter/476.pdf
[67] Minn. Stat. § 216B.16, Subd. 8. https://www.revisor.mn.gov/statutes/cite/216B.16#stat.216B.16.8
[68] Connecticut General Assembly, February Session 2022, Raised Bill No. 5203, Referred to Committee on Energy and Technology. https://www.cga.ct.gov/2022/TOB/H/PDF/2022HB-05203-R00-HB.PDF.

before it passed.[69]

B. **Illinois** legislators proposed to ban cost recovery of charitable expenses in an early draft of a utility reform bill, the Clean Energy Jobs Act,[70] but that language was stricken out of legislation before it passed.[71]

2. Legislatures should require PUCs to issue rules requiring utilities to sign waivers of protective agreements, confidentiality and privilege claims during investigations or audits that involve criminal violations, including corruption and bribery, or should revise statutes to waive those privileges in cases of criminal violations.

3. Legislatures should ban central service companies from incurring or allocating any expense to an operating company without the authorization of the operating company.

4. In states with elected commissions, legislators should pass laws prohibiting the acceptance of campaign contributions from regulated entities or their affiliates.

   In Georgia, the legislature has made it illegal for a regulated utility or a PAC acting on its behalf to contribute money to any member of the Public Service Commission (PSC), candidate for the PSC, or their campaign committees.[72]

   Other states, like Louisiana, have no such law.

5. Beyond broader campaign finance reform, legislatures also can make it illegal for *state-regulated monopoly utilities in particular,* as well as the parent companies of state-regulated monopoly utilities operating in their state, to contribute to political campaigns, under the argument that monopoly utilities are unique entities given their customers' inability to take their business elsewhere.

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[69] Conservation Law Foundation, Testimony in support of SB 176, SB 177, HB 5203, and in opposition to HB 5200, March 2, 2022. https://www.cga.ct.gov/2022/ETdata/Tmy/2022SB-00176-R000303-Laun,%20Shannon,%20Staff%20Attorney-Conservation%20Law%20Foundation-Support%20-%20Oppose-TMY.PDF.
[70] Illinois, 102nd General Assembly, HB0804 Engrossed. https://www.ilga.gov/legislation/102/HB/PDF/10200HB0804lv.pdf.
[71] Illinois, 102nd General Assembly, HB0804. See Sec. 9-227 on page 631. https://www.ilga.gov/legislation/102/HB/10200HB0804.htm.
[72]

Recent examples of legislation that did not pass:

A. **Virginia:** Bipartisan legislation introduced in 2022 would have banned any utilities or its PACs from contributing to any candidate for any office, and any candidate, campaign committee or political committee from accepting a utility's contribution.[73] The bill did not pass.

B. **South Carolina:** Legislators introduced a bill to prohibit any member of or candidate for the General Assembly from accepting campaign contributions from a regulated utility,[74] and one to prohibit utilities from making contributions to any candidate for statewide office.[75] The bills did not pass.

Short of an outright ban, legislators could attempt to limit the types of contributions that utilities could make. For instance, noting the particular use that utilities have found for 501(c)(4) organizations as a vehicle for secretive spending, legislators could attempt to ban utilities from contributing to those organizations. Some state PUCs (like Michigan, see page 25) have attempted to ban regulated utilities giving to 501(c)(4) organizations entirely, but utilities have subverted it by making the contributions via their non-regulated parent companies. Legislatures could close that loophole.

Legislatures could also require real-time disclosure of any contributions made by a regulated utility's parent company or other affiliates to a 501(c)(4) organization. The PUC or a relevant campaign finance regulator could receive the disclosure.

Disclosure by statute

Legislators should direct PUCs to require annual disclosures in the following areas (see "Public Utility Commissions," page 11, for greater detail). Disclosures should include itemized expenditures with names of vendors and the nature of the expenses described in detail.

1. All lobbying and political influence activities, including influencing regulation or legislation of all types, influencing public opinion about policy matters or the company itself, rate case advocacy, trade associations, and charities.
2. Advertising and marketing expenses

[73] Virginia General Assembly, 2022 Session, HB 71. https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB71
[74] South Carolina Legislature, Session 123 (2019-2020), H 3433. https://www.scstatehouse.gov/billsearch.php?billnumbers=3433&session=123&summary=B
[75] South Carolina Legislature, Session 123 (2019-2020), H 3447. https://www.scstatehouse.gov/billsearch.php?billnumbers=3447&session=123&summary=B

3. Regulatory commission advocacy
4. All of the above for the utilities' parent companies and central service companies that occurred within the state.
5. Salaried positions involved in political or public influence, including title, job description, total compensation, and the percentage of compensation included in rates.
6. Line-item disclosure of frequently abused FERC accounts, such as 920, 923, 930.1, 930.2

Examples:

A. **Minnesota:** Statute requires that utilities disclose in rate cases (though not annually) schedules of lobbying, gifts, owned or chartered aircraft, dues in organizations with descriptions of the recipient organization and FERC accounts charged, expenses for high paid officers, board of expenses, and travel expenses.[76]

Clarifying PUC jurisdiction over parent companies, service companies, cooperatives and municipal utilities on disclosure matters

Legislators should pass laws that make clear that PUCs have the jurisdiction to require disclosure of political spending by certain entities that can often avoid PUC oversight.

A. Legislators should clarify that the PUC has the authority to require disclosures of the parent companies and central service companies who are affiliated with operating companies under PUC jurisdiction.

B. Legislators should clarify that, whether cooperatives and municipal utilities are rate-regulated by PUCs or not, PUCs have jurisdiction to require disclosure of their spending on political influence activities, both directly and through their trade associations and wholesale power providers.

Guidance for PUC enforcement by statute

Legislators should direct PUCs to issue high fines in response to any violations of these political cost recovery standards. Refunds are not enough of a consequence to deter utilities from charging customers for their political expenses.

1. Legislators could require that, for any instances in which the PUC has found a utility to have booked political advocacy expenses to customer-funded accounts

[76] Minn. Stat. § 216B.16, Subd. 17. https://www.revisor.mn.gov/statutes/cite/216B.16#stat.216B.16.17.

in violation of the PUCs rules - the PUC shall fine the utility for an amount not less than the improperly recovered expenses, and that the PUC may fine the utility for an amount of up to 20 times the expenditure itself.

If, for instance, the PUC found that the utility spent $1 million of ratepayer money on political activities, then the PUC would be required to penalize the utility with a fine between $1 million and $20 million, *in addition* to the required refund of the original $1 million to the utility's ratepayers, with appropriate interest.

Legislators can also direct the distribution of those penalties to be divided between ratepayer rebates and the PUC itself to increase its enforcement resources, or to other purposes like third-party low-income bill assistance programs that are independent of the utility (and would not count toward a utility's statutory obligations.)

2. Legislatures should generally increase PUC budgets as necessary so that they can adequately perform audit and enforcement functions.

3. Legislators should increase funding to state consumer advocates who often do the lion's share of discovery and oversight of utilities in state PUC proceedings, and who must compete with high-paid regulatory attorneys hired by utilities.

4. Legislators can pass intervenor funding programs, which create stable funding mechanisms for independent organizations to intervene in rate cases. Robust intervention can add critical oversight over utilities' spending, political and otherwise, in rate cases. Sixteen states have passed some type of intervenor funding, though the programs are only active in six - California, Idaho, Michigan, Minnesota, Oregon, and Wisconsin. Programs in Illinois and Washington are currently being established. A table with authorizing statutory language is available in the National Association of Regulatory Utility Commissioners' report on the topic.[77]

5. Legislators can hold hearings investigating whether PUCs are adequately protecting customers if the PUCs have not passed rules, disclosures, and enforcement mechanisms to keep utilities' political expenses out of rates.

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[77] NARUC, *State Approaches to Intervenor Compensation*, Dec. 17, 2021, Page 26
https://pubs.naruc.org/pub/B0D6B1D8-1866-DAAC-99FB-0923FA35ED1E

V. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission, or FERC, can protect customers from paying for the political advocacy activities of their utilities via a portfolio of rules, disclosure, and enforcement reforms.

FERC sets the rates for all interstate transmission of electricity and gas, which means that FERC has jurisdiction over what costs utilities are allowed to recover from their wholesale transmission customers.

FERC also manages the Uniform System of Accounts (USoA) which gives guidance to utilities for how to classify different expenditures. Most state PUCs require utilities to use the USoA as their accounting system, which means that the accounting system has a trickle-down effect beyond FERC's jurisdiction over wholesale transmission rates.

FERC has long recognized that ratepayers should not be forced to pay for their utility's political activities, which typically benefit a utility's shareholders.[78]

Yet despite that principle, the nation's ratepayers are currently paying for their utilities' efforts to influence policy in the transmission portion of their gas and electric bills.

As with PUCs, FERC can adopt a series of reforms, including stronger rules, more effective disclosures, and a robust enforcement system to protect customers.

FERC currently has an open Notice of Inquiry (NOI), Docket RM22-5, to consider many questions related to utilities' recovery of political costs from customers. The suggestions in this report echoed responses to the NOI by many consumer advocates and state officials who called on FERC to act.

FERC rulemaking

FERC should clarify rules, definitions and standards in the USoA to make explicit that utilities must place any expenses related to efforts to influence political or public policy outcomes in non-recoverable accounts in electric transmission and gas and oil pipeline ratemaking. These measures should include:

1. **Clarifying the definition of Account 426.4**

[78] *Alabama Power Co., et al*. 24 FPC 278, 286–87 (1960).

FERC Account 426.4 is for "Expenditures for certain civic, political and related activities."[79] The account includes expenses to influence public opinion with respect to elections, appointments, referenda, legislation and ordinances, as well as approval of franchises, and other activities to influence the decisions of public officials.

But the account also explicitly says that it "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."

Because of this "exception" language, utilities currently place the costs of activities to influence regulatory agencies - such as the EPA or state environmental regulators, FERC itself or state commissions, and other agencies - in another, above-the-line account code for recovery from customers. In its NOI, FERC asks whether it should change this language:

"What is the appropriate scope of this exemption for utilities and, by extension, their industry associations? Are there types of appearances before regulatory or governmental bodies for which the related expenditures should be excluded from rates, and if so, on what basis?"[80]

FERC should change this "exemption" language in 426.4 to clarify that any expenses undertaken by utilities to influence their regulators for legislative rulemaking should remain in Account 426.4 and be presumptively non-recoverable.

FERC may choose to clarify that if a regulator required a utility to testify or provide information, then the appearance appropriately qualifies for an exemption. FERC might also decide that it wants to allow utilities' appearances before FERC for formal cases, such as rate cases, to remain exempt from 426.4 and eligible for recovery. The cleanest, hardest line with the fewest gray areas and the greatest emphasis on customer protection would be to make those costs for rate case advocacy ineligible. At a minimum, FERC should clarify that attempts to influence regulators on questions of legislative rulemaking (such as FERC's transmission NOPR, EPA rules on emissions standards, or DOE appliance standards) all are political influence tactics that belong in 426.4 and

[79] Cornell Law School, Legal Information Institute, 18 CFR § 367.4264 - Account 426.4, Expenditures for certain civic, political and related activities. https://www.law.cornell.edu/cfr/text/18/367.4264.
[80] FERC Notice of Inquiry. Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses. Question 19. RM22-5. Issued Dec. 16, 2021. https://www.ferc.gov/media/e-2-rm22-5-000.

are presumptively ineligible for recovery. The Center for Biological Diversity suggested specific amendments to 426.4 in its initial comments in response to FERC's NOI on cost recovery of political expenses.[81]

If FERC decides to clarify the language of 426.4, it should in parallel clarify the language of other affected accounts, most notably Account 928, to make sure that utilities have clear instructions for which regulatory influence expenses are recoverable and which are not.

2. **FERC should move trade associations from Account 930.2 to Account 426.4**

   Utility trade associations like the Edison Electric Institute and American Gas Association are inherently political organizations that seek to influence policy in a host of ways.

   Audits and investigative reporting from EPI and others have shown how, if utilities were doing most of the activities undertaken on their behalf by their trade associations, they would qualify as "Civic, Political and Related Activities" and be placed in Account 426.4, rendering them non-recoverable from customer money.[82]

   However, FERC allows utilities to charge their trade association dues to Account 930.2, along with other "Miscellaneous" items. Utility trade associations claim that they excise the lobbying portions of their dues, but they define lobbying using an Internal Revenue Service definition of lobbying that is far narrower than FERC's definition for "civic, political and related activities" for Account 426.4.

   To protect customers from being conscripted to pay for political speech with which they may not agree or consent to make, FERC should include trade association dues in Account 426.4.

3. **FERC should clarify that all advertising and marketing expenses designed to influence public opinion or increase good will toward the utility (i.e. Account 930.1) should be presumptively non-recoverable**

   Beyond trade associations and Account 930.2, FERC asked in its NOI if there are other above-the-line accounts "in which expenses related to civic, political,

[81] See Comments of Center for Biological Diversity, FERC Notice of Inquiry RM22-5.
[82] Kasper, Matt, David Pomerantz, and David Anderson. "Paying for Utility Politics: How Ratepayers Are Forced to Fund the Edison Electric Institute and Other Political Organizations." Energy and Policy Institute, May 2017. https://www.energyandpolicy.org/utility-ratepayers-fund-the-edison-electric-institute/.

public outreach, and similar activities may be recorded (e.g., accounts pertaining to advertising costs.)"[83]

FERC is right to single out advertising costs for scrutiny.

Advertising and marketing costs appear throughout FERC's USoA.[84] Generally, FERC instructs utilities to charge advertising costs to the account code that relates to the purpose of the advertising, such that advertising for labor belongs in Account 416.

Account 909 is reserved for Informational and Instructional Advertising. Account 913 is reserved for advertising that "promote or retain the use of utility service," to grow sales.

FERC specifies one account, 930.1, explicitly for "general advertising expenses," including "advertising activities on a local or national basis of a good will or institutional nature, which is primarily designed to improve the image of the associate utility company or the industry, including advertisements which inform the public concerning matters affecting the associate utility company's operations, such as, the cost of providing service, the associate utility company's efforts to improve the quality of service, the company's efforts to improve and protect the environment, and other similar forms of advertisement."[85]

Separately, 930.1 instructs that utilities should exclude any civic, political and related activities, including advertising activities "that are designed to solicit public support or the support of public officials in matters of a political nature" and place those costs in Account 426.4.[86]

FERC's distinction between "good will or institutional" advertisements and advertisements "that are designed to solicit public support … in matters of a political nature" reflects a dated understanding of how public relations work in the 21st century.

Investor-owned utilities spend millions of dollars on "good will" advertising "designed to improve the image" of the company *precisely because* that good will translates to political influence. Regulated utilities have monopolies over

[83] FERC Notice of Inquiry. Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses. Question 22. RM22-5. Issued Dec. 16, 2021. https://www.ferc.gov/media/e-2-rm22-5-000.
[84] 18 C.F.R. § 101. https://www.law.cornell.edu/cfr/text/18/part-101
[85] 18 CFR § 367.9301. https://www.law.cornell.edu/cfr/text/18/367.9301
[86] Ibid.

their service territories. They have no need to use advertising to compete for customers, since they face no competition. To the extent they use advertising to inform customers about important safety, demand response or related essential measures, that advertising is covered by Account 909. For a utility, the purpose of general advertising and public relations spending is to improve their reputation in ways that increase their political standing, leading to regulatory outcomes that grow profits.

FERC should update its accounting measures to reflect that reality and clarify that all such advertising expenses are ineligible for recovery from customers.

Finally, while it's an issue that's tangential to political influence spending, FERC should consider designating Account 913, which covers utilities' general advertising to increase sales, as presumptively non-recoverable. In the utility growth paradigm that existed through the 1960s and 70s, one could have made the argument that all of a utility's customers benefited when a utility grew its service territory due to economies of scale that existed at the time. Today's paradigm, in a country that is nearly fully electrified, and with utilities facing many competitors from merchant generators and customer-owned resources, is different. Sales-promoting advertising does not serve customers, and FERC should not let utilities presumptively charge customers for it.

Disclosure

FERC allows utilities to use a "formula rate" setting process, rather than conducting full rate cases to set transmission rates.[87] In this process, FERC allows a utility to submit a formula for calculating the utility's cost of service. While customers and intervenors can challenge formula rates, formula rate setting generally leads to less rigorous disclosure than a formal rate case.

FERC has other tools, however, to mandate disclosure of important information from utilities. Utilities under FERC jurisdiction must file annual Form 1 filings for electric transmission, and annual Form 2 filings for gas transmission. These forms contain some information about the utilities' different expenditures, but they do not require utilities to disclose information about their political expenditures in the detail necessary to ensure that they are not improperly allocating those political costs to customers.

[87] FERC: Formula Rates in Electric Transmission Proceedings: Key Concepts and How to Participate. Accessed Jan. 8, 2023.
https://www.ferc.gov/formula-rates-electric-transmission-proceedings-key-concepts-and-how-participate.

As a result of that flawed disclosure regime, FERC's audits are the only way to know, after the fact, if utilities have improperly charged customers for political activities. Audits have found exactly that. FERC reports annually on its enforcement activities, and every year, it describes charitable, lobbying and political misallocation as a consistent problem.[88]

In audits that concluded between 2016 and 2022, Division of Audits and Accounting (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.[89] That total excludes FERC's 2015-2021 audit of FirstEnergy (See "FERC Fines FirstEnergy for withholding information" below.)

Type of error	Sum of errors
Charitable donations	$9.7 million
Lobbying	$7.4 million
Political advertising	$3.3 million
Total	**$20.4 million**

FERC Audits of utilities' inaccurate reporting of political and charitable expenses, excluding FirstEnergy: 2016 - 2022 (Energy and Policy Institute analysis of FERC DAA audits[90])

DAA has audited an average of fewer than 10 electric companies, 3 gas companies, and 2 oil companies per year since 2015. Given DAA's limited capacity, the over $20 million that Commission auditors discovered of misreported political expenses in recent years likely represents a fraction of the total amount that the nation's customers are improperly paying for utilities' political efforts through Commission-jurisdictional rates.

1. **Line-item disclosure of political expenses in Form 1 filings**

   Rather than relying solely on audits to catch utilities after they've already charged customers for political expenses, FERC should strengthen the disclosures required in utilities' annual Form 1, 2 and 60 filings to better deter misallocation.

   Currently, these forms mostly only require top-line disclosures of the accounts where utilities frequently bury political costs. For instance, more than $137 million of the $144 million that thirteen FirstEnergy subsidiaries paid to the

[88] FERC: Enforcement Resources. Accessed Jan. 8, 2023. https://www.ferc.gov/enforcement-resources
[89] Total does not include several cases in which auditors identified misreported expenses and required refunds, but did not specify the amount misreported.
[90] Energy and Policy Institute, January 2023, "Review of FERC audits – findings of improper accounting." LINK

FirstEnergy Service Company for external affairs services in 2017-2019 were reported by the subsidiaries in a single Administrative and General (A&G) account for outside services, account number 923.[91]

No one looking at the top-line disclosure by FirstEnergy Service Company for that account would have any idea that many of those costs might be political, and in fact could have been used in an ongoing scheme later found to be illegal.

Similarly, an analysis of FERC Form 1 filings by E9 Insight found that fewer than 12% of utilities itemized the individual trade association dues that they disclosed.

Ample precedent exists for FERC to require more granular disclosure. Other FERC accounts today require line-item disclosure, and the SEC's U-13-60 form, the predecessor to today's FERC Form 60, historically required utilities to make itemized disclosures in A&G accounts like 923 and 930.1, and non-operating 426 accounts.[92]

FERC replaced the U-13-60 report with what it called a "streamlined" Form 60 in rules adopted to implement the Public Utility Holding Company Act (PUHCA) of 2005, over the objections of the National Association of Regulatory Utility Commissioners (NARUC) and others.[93]

"The detail in these schedules provides an important tool for understanding service company costs and functions," NARUC said.[94]

A representative of the Public Utilities Commission of Ohio who spoke at one 2006 technical conference the Commission held as it considered the new Form 60 rules presciently warned of an "explosion" of outside services spending by utilities in Ohio.[95]

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[91] Anderson, Dave. "13 FirstEnergy Utilities Paid $144 Million for External Affairs to Service Company Involved in Ohio Bribery Scandal." Energy and Policy Institute, May 4, 2021. https://www.energyandpolicy.org/firstenergy-service-company/.
[92] For an example, see *FirstEnergy* SEC U-13-60 (2004) P50, 61, 70, https://www.documentcloud.org/documents/20468395-firstenergy-service-company-u-13-60-2004.
[93] Order No. 667, Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005 at P11.
[94] In Re. Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005. Comments to FERC of the National Association of Regulatory Utility Commissioners. (2006) https://www.documentcloud.org/documents/20476139-20060808-50374428763.
[95] In Re. Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005. Transcript of Technical Conference, July 18, 2006. Comments of PUCO. P 99. https://www.documentcloud.org/documents/20476143-transcript-of-july-18-2006-ferc-technical-re-uniform-system-of-accounts-for-utility-service-companies.

FERC should require disclosure of all of the following expenses at line-item level of detail. Disclosure should include unredacted billing amounts, billing dates, outside consultants/contracts, salaries and expenses of relevant utility staff, and explanations of the expense in detail sufficient to describe the purpose of the cost:

A. Outside services (USoA Account 923). Utility should disclose, for every individual expense, which subaccount the outside vendor's work would fall into.
B. Expenses for the purpose of influencing regulation or legislation directly or indirectly (USoA Account 426.4).
    i. Methane gas pipeline companies that are required to file an annual Form 2 report with FERC currently must disclose the nature, payee, and amount for 426.4, through they may group expenses under $250,000. FERC should eliminate that threshold, which is higher than many influence expenses that merit line-item disclosure, and extend the same disclosure regime to electric companies.
C. Advertising and marketing expenses designed to influence public opinion or about the utility's reputation (USoA Account 930.1).
D. Regulatory commission expenses (USoA Account 928). Line-item disclosure is already required for this account, but FERC should fortify it by requiring utilities to disclose particular activities of outside vendors, along with docket numbers.
E. 501(c)(6) trade associations, and other miscellaneous general expenses (Currently USoA Account 930.2).
F. 501(c)(3) and 501(c)(4) non-profits (USoA Account 426.1).
    i. Methane gas pipeline companies that are required to file an annual Form 2 report with FERC currently must disclose the nature, payee, and amount for Account 426.1, though they may group expenses under $250,000. FERC should eliminate that threshold, which is higher than many charitable contributions that merit line-item disclosure, and extend the same disclosure regime to electric companies.
G. Administrative and General Salaries (USoA Account 920).
H. Other income deductions (USoA Account 426.5).
    i. Methane gas pipeline companies that are required to file annual Form 2 report with FERC currently must disclose the nature, payee, and amount for 426.5, though they may group expenses under $250,000. FERC should eliminate that threshold, and extend the same disclosure regime to electric companies.

Some of these accounts generally are presumptively recoverable (the 900- accounts), and some are presumptively non-recoverable (the 400- accounts). Line-item disclosure of both types of accounts is necessary to ensure that utilities are allocating correctly.

FERC should mirror all of these enhanced disclosures to Form 2 for gas transmission operators, and to Form 60 for central service companies.

In FERC's current NOI, a wide array of consumer advocates, environmental advocates and state officials suggested changes similar to the above recommendations. These include Ohio Consumers' Counsel, the Sierra Club, the Virginia Attorney General, state agencies from Massachusetts and 13 other states, the Louisiana Public Service Commission, the Public Utility Commission of Ohio, and Consumer Advocates from South Carolina, Iowa, New Jersey, New Hampshire and the District of Columbia.

2. **Line-item disclosure of affiliate transactions in relevant accounts**

   FERC should require Form 1 filers to disclose itemized lists of any "transactions with associated (affiliated) companies," included in Accounts 426.1, 426.4, 923, 930.1, 930.2. Descriptions should include amounts, dates of payments, payees and purpose of the payments. FERC currently requires some similar disclosures of methane gas utilities in their Form 2 filings, albeit only for expenditures over $250,000.

   For both Form 1 and Form 2 filers, FERC should remove the current reporting minimum of $250,000, since utilities can and have expensed pernicious political advocacy for much lower amounts than that, and since Form 1 filers could break up a charge of $250,000 into sums and allocate them to separate affiliates to game the threshold.

Enforcement

FERC has broad authority to fine utilities for misfiling information on their forms. Form 1 instructions note, "The Commission may assess up to $1 million per day per violation of its rules and regulations." While FERC generally has used its penalty authority in cases of market manipulation, it has generally not done so to fine utilities for misfiling information in ways that lead to customers being improperly charged for political costs, despite its clear authority to do so.

Instead, when FERC auditors discovered these abuses, FERC required utilities only to refund customers with interest. Given the infrequency of audits, and the incredible temptation for utilities to charge customers for these costs, refunds alone do not provide adequate deterrent value.

FERC fines FirstEnergy for withholding information about political expenses from auditors

Last month, FERC did, for the first time in recent memory, fine a utility for activities related to misreporting of its political expenditures, some of which were charged to ratepayers.[96]

FERC announced in January, 2023 a $3.9 million civil fine of FirstEnergy for violating FERC's "duty of candor" rule and federal utility laws by omitting key information about the company's spending related to its political spending when FERC commenced an audit in February, 2019.[97]

"Enforcement concludes that FirstEnergy and its affiliates and subsidiaries omitted material information that was responsive to a series of DAA data requests and failed to exercise due diligence to ensure the accuracy and completeness of its responses, and therefore violated Section 35.41(b). Enforcement further concludes that FirstEnergy and its affiliates and subsidiaries failed to comply with Section 1264 of PUHCA 2005 and Section 301 of the FPA (and associated regulations at 18 C.F.R. § 366.2) by not providing the Commission with open access to its accounts and records," FERC's investigation concluded.

In accepting the penalty, FirstEnergy stipulated to the fact that it withheld from FERC "information related to FirstEnergy's lobbying and governmental affairs expenses and accounting."

"While FirstEnergy provided [FERC auditors] with certain information related to its lobbying and governmental affairs expenses and accounting during the Audit, it did not provide any information related to its efforts on Ohio House Bill 6 and associated payments or payments related to Generation Now, the Speaker of the Ohio House of Representatives, or the Chairman of the Ohio PUC," FERC said in its penalty and order stipulation.

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[96] FERC Audit Report of FirstEnergy, Docket No. FA19-1-000. February 4, 2022. https://www.documentcloud.org/documents/21197493-ferc-enforcement-audit-of-firstenergy#document/p21/a2078102.
[97] FERC Order Approving Stipulation and Consent Agreement, Docket No IN-23-2-000. Dec. 30, 2022. https://www.documentcloud.org/documents/23560119-ferc-order-and-stipulation-firstenergy-investigation-december-2022

FERC auditors may have only caught FirstEnergy's withholding of the information due to the efforts of the FBI and federal prosecutors. According to the penalty order, FERC had already finished and previewed for FirstEnergy a preliminary version of its audit when the HB 6 scandal burst into the public's attention in July 2020 with the Department of Justice charging Ohio Speaker Larry Householder with racketeering. FirstEnergy was effectively caught red-handed, as the federal criminal exposed the lobbying spending and bribes FirstEnergy had failed to disclose to FERC's auditors.

Subsequent responses from FirstEnergy to the auditors revealed that the company had withheld "information related to more than $90 million of lobbying and other payments ($70.9 million related to 501(c)(4) entities and/or the then-Speaker of the Ohio House of Representatives, $44.4 million of which was allocated to FirstEnergy Solutions, and $22.8 million related to the then-Chairman of the Ohio PUC)."

Technically, FERC did not fine FirstEnergy for charging ratepayers for the bribe payments it made; it fined the company for withholding information about those payments from its auditors.

FERC said in its order that the $3.9 million fine is "a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct."

But that penalty is a rounding error compared to the $90 million that FERC attempted to illegally take from customers, and certainly compared to the billions of dollars in subsidies that FirstEnergy was able to secure through the passage of HB 6, much of which has yet to be repealed. FirstEnergy earned $11 billion in revenue in 2021, as Cleveland.com noted in its reporting of the fine.[98]

FERC said in its order that the $3.9 million is consistent with a Revised Policy Statement on Penalty Guidelines it passed in 2010. Those guidelines explain that, like federal criminal sentencing guidelines, the Penalty Guidelines are meant to provide adequate deterrence.[99]

It's not clear how a $3.9 million fine for withholding information about $90 million worth of expenses partly spent on an illegal scheme to secure a law worth over $2

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[98] Zuckerman, Jake. "FirstEnergy to Pay $3.9m Fine for Withholding Lobbying Info from Federal Regulators." Cleveland.com, January 3, 2023. https://www.cleveland.com/open/2023/01/firstenergy-to-pay-39m-fine-for-withholding-lobbying-info-from-federal-regulators.html.
[99] 132 FERC ¶ 61,216. https://www.ferc.gov/sites/default/files/2020-07/RevisedPolicyStatementonPenaltyGuidelines.pdf.

billion in nuclear and coal subsidies and other utility handouts would provide that deterrence.[100]

Still, while the fine is relatively small, it is the first of its kind in recent memory, and provides an opportunity upon which FERC can build.

FERC should set clear expectations that penalties will be correlated to the improperly allocated expenditure itself, and that they will be high enough to ensure the integrity of FERC's prohibitions on cost recovery of political spending. FERC could, for example, set new guidelines which make clear that any violations will result in a penalty no less than the amount that the utility improperly booked to customers, and up to 20 times that amount. A utility caught spending $1 million of customer money on political activities would face a fine of $1 million at a minimum, and $20 million at a maximum, on top of the utility's reimbursement of the misallocated money (with interest) to customers.

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[100] Department of Justice, "Federal grand jury indicts Ohio House Speaker enterprise in federal public corruption racketeering conspiracy involving $60 million," July 30, 2020. https://www.justice.gov/usao-sdoh/pr/federal-grand-jury-indicts-ohio-house-speaker-enterprise-federal-public-corruption; Ohio Manufacturers' Association: "HB 6's OVEC Subsidies: Bailing Out a Sinking Ship," 11/10/2020. https://www.ohiomfg.com/communities/energy/hb-6s-ovec-subsidies-bailing-out-a-sinking-ship/; Pelzer, Jeremy. "Here's What HB6's Controversial 'Decoupling' Policy Is and Why Ohio Lawmakers Are Trying to Repeal It." Cleveland.com, December 2, 2020. https://www.cleveland.com/open/2020/12/heres-what-hb6s-controversial-decoupling-policy-is-and-why-ohio-lawmakers-are-trying-to-repeal-it.html.

VI. Congress

Congress can protect customers from paying for the political advocacy activities of their utilities via a portfolio of rules, disclosure, and enforcement reforms.

Just as state legislatures set the purpose and scope of PUCs regulation over utilities at the state level, Congress sets the purpose and scope of FERC's regulation of utilities' transmission rates and wholesale market activity.

Congress can require FERC to take many of the above actions in terms of rulemaking, disclosure and enforcement. While FERC could make some of these changes absent legislation, statutory changes remove uncertainty, create a durable long-term structure, and mitigate legal challenges by utilities. Congress should take the following actions (see "FERC," page 35, for more details):

Rulemaking

1. Congress should ban cost recovery for any political activities by utilities, including influencing regulation or legislation of all types, influencing public opinion about policy matters or the company itself, regulatory commission advocacy, trade association dues, charitable giving, and litigation seeking to overturn rules or statutes.

2. Congress should require FERC to clarify all definitions in the Uniform System of Accounts such that all expenses related to political influence activities of any of the types listed above shall be presumptively non-recoverable from ratepayers.

3. Congress should require FERC to clarify that all advertising and marketing expenses designed to influence public opinion, increase public good will toward the utility or improve the company's reputation, or promote sales, shall be presumptively non-recoverable from ratepayers.

4. All of these rulemakings should apply both to expenses related to the utility's contracts with external firms, and to the salaries of relevant utility staff.

Disclosure

1. Congress should require utilities to disclose to FERC information about their political spending annually. Disclosure should include unredacted billing amounts, billing dates, outside consultants/contracts, salaries and expenses of relevant utility staff, and explanations of the expense in detail sufficient to describe the purpose of the cost:

A. Outside services: Utility should disclose, for every individual expense, the relevant subaccount that best describes the purpose of the outside vendor's activities in that expense line.

B. Expenses for the purpose of influencing regulation, legislation, ordinances, elections, referenda, franchise approval, public opinion about policy matters, decisions of public officials at local, state and federal levels of government, trade association dues, and charitable giving.

C. Advertising and marketing expenses designed to influence public opinion or the utility's reputation.

D. Expenses involved in regulatory commission appearances and advocacy, including the particular activities of outside vendors, along with the relevant docket number for each expense.

2. Congress should require regulated utilities to disclose to FERC itemized lists of expenses, with no minimum threshold of reporting, of any "transactions with associated (affiliated) companies," for any expenses that relate to political influence activities, including influencing including influencing regulation or legislation of all types, influencing public opinion about policy matters or the company itself, regulatory commission advocacy, trade association dues, charitable giving, and litigation seeking to overturn rules or statutes.

Enforcement

1. Congress should require that, for any instances in which FERC has found a utility to have improperly spent customer money on political expenses – FERC shall fine the utility for an amount not less than the improperly recovered expenses, and that it may fine the utility for an amount of up to 20 times the expenditure itself.

   If, for instance, FERC found that the utility spent $1 million of ratepayer money on political activities, then FERC would be statutorily required to penalize the utility with a fine between $1 million and $20 million, *in addition* to the required refund of the original $1 million to the utility's ratepayers, with appropriate interest.

2. Congress should direct the distribution of those penalties to be divided between ratepayer rebates and to FERC itself for the purposes of increasing its enforcement resources.

3. Congress should broadly increase FERC's budget as necessary for FERC to adequately perform audit and enforcement functions.

Campaign finance reform

Congress could also enact campaign finance reform to restrict utilities' ability to inject money into elections.

Congress's DISCLOSE Act would require 501(c)(4) organizations to disclose their donors.

That aspect of the legislation would be uniquely effective at reining in corruption within the utility sector. Recent cases of utilities' political spending that have attracted law enforcement scrutiny, and sometimes criminal indictments - including scandals in Arizona,[101] Florida[102] and Ohio[103] - have involved utilities' attempts to spend political money secretly, generally through the use of 501(c)(4) organizations.

The House of Representatives has passed the bill repeatedly, most recently as the For The People Act. It has failed in the Senate due to unified Republican opposition.

Alternatively, Congress could approach the problem from the other end by addressing utilities rather than 501(c)(4) organizations. Congress could, for instance, specifically require utilities to disclose all contributions that they make either directly to 501(c)(4) organizations, or to third parties if they intended to further pass the money to 501(c)(4) organizations. FERC could be the entity overseeing the disclosures quite easily, simply by adding a requirement to Form 1 reports that utilities currently must file with the agency to detail any contributions to 501(c)(4) organizations from themselves or affiliates.

More aggressively, Congress could attempt to ban utility contributions to 501(c)(4) organizations outright, or most aggressively of all, could seek to curtail all utilities' corporate political spending under the argument that utilities' unique role as state-sanctioned monopolies justifies special treatment in terms of their ability to spend on political campaigns.

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[101] Randazzo, Ryan. "APS Acknowledges Spending Millions to Elect Corporation Commission Members, after Years of Questions." The Arizona Republic. The Republic | azcentral.com, March 29, 2019. https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/.

[102] Garcia, Jason, and Annie Martin. "Florida Power & Light Execs Worked Closely with Consultants behind 'Ghost' Candidate Scheme, Records Reveal: Special Report." Orlando Sentinel. Accessed January 8, 2023. https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-senate-ghost-candidates-20211202-szjhv7ox6vcmphm6pgd437y52i-htmlstory.html.

[103] "Selling out in the Statehouse." Breaking down the HB 6 bribery: A timeline of Ohio's worst scandal. The Enquirer, July 29, 2021.

While utilities would surely challenge such a ban's legality under the Supreme Court's holding in Citizens United and other rulings that overturned past campaign finance measures, there is no guarantee that they would win. From the perspective of campaign finance law, courts may hold that utilities are different from other companies.

Precedent exists for such treatment: the Public Utility Holding Company Act of 1935 banned all political contributions by public utility holding companies to politicians or parties, and required monthly disclosure of any lobbying by holding companies or subsidiaries.[104] It stood as law until 2005, when it was repealed.

The Citizens United decision itself contains some justification for treating utilities as "different" under campaign finance law. In combating the dissenting justices' argument that the founders would not have wanted "corporations" to have the same First Amendment protections as people, Justice Scalia pointed out that the corporations of that era were, in fact, state-granted monopolies, which made them distinct from modern companies. "The Founders' resentment towards corporations was directed at the state-granted monopoly privileges that individually chartered corporations enjoyed," Scalia wrote.[105]

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[104] 15 U.S.C. ch. 2C § 79 et seq. PUHCA, now repealed, available at https://www.sec.gov/about/laws/puhca35.pdf
[105] Scalia, J. Concurring, Citizens United V. FEC, 558 U.S. 310

VII. Other federal agencies

Department of Justice

Utilities' nexus to criminal activities shakes faith in the democratic process, harms ratepayers, slows down the transition to clean energy, and requires specific tools and expertise to investigate that local authorities and regulators typically lack. Given the recent spate of criminal indictments that have involved utilities' political spending, the Department of Justice should take steps to investigate criminal violations in the sector more proactively.

1. DOJ should impanel a standing task force to investigate utilities' funding of behavior that violates public corruption and election laws. Utilities have increasingly either admitted to such crimes in deferred prosecution agreements, or have been proven to have funded schemes in which other parties were charged with crimes. Federal investigators have often discovered the utilities' role in these criminal activities only incidentally, as the result of investigations of corrupt activity by public officials. Proactive investigation of the sector may well lead to more prosecutions.

2. When utilities like FirstEnergy sign a deferred prosecution agreement in connection with political bribes, kickback or corruption payments, prosecutors should prioritize full disclosure of political spending by the utility during the time period covered by a criminal investigation, as well as moving forward, as a precondition to the agreement. A utility should not be allowed to simply "pause" political spending while a DPA is in place, build up its political war chest, and then spend it without disclosure as soon as the DPA expires. Prosecutors should understand the value of full disclosure to ensure that all wrongdoing is uncovered, and consumers are protected.

Securities and Exchange Commission

As part of its promulgation of climate-related disclosures for publicly-traded companies, the SEC should require that companies disclose details about their spending on lobbying and their membership in political trade associations. A Congressional rider currently prohibits the SEC from finalizing a rule requiring disclosure of political contributions, but that rider would not preclude the SEC from requiring disclosure of lobbying expenses or memberships in trade associations or other groups that seek to influence policy.

Investors are asking for these disclosures so that they can assess whether companies are aligning their political engagement with the goal of decarbonization to which many companies have publicly committed. A group of investors with over $7 trillion assets under management "has clearly articulated in its company letters and engagements the expectation that companies should work to align their lobbying with the goals of the Paris Agreement."[106] Investors cannot assess companies' performance without adequate information about their lobbying and other policy advocacy.

Institutional investors have found every large utility that they have assessed to have failed to provide adequate information about their climate policy engagement.[107] The SEC should compel disclosure.

Federal Trade Commission

The FTC should commence an investigation of the electric utility industry's practices that impede renewable energy competition and harm consumer protection pursuant to the Commission's authority under Article 6(b) of the FTC Act.

The FTC Act empowers the Commission to conduct wide-ranging studies on industries and collect confidential business information from corporations in question. Through an Article 6(b) investigation,[108] the FTC can exercise its federal jurisdiction to conduct an industry-wide study on electric utility industry abuses toward competitors and consumers, gaining "a deep understanding of competitive conditions" and "throw[ing] light on the need for and wisdom of legislation for corrective action," just as it did 100 years ago when the FTC conducted broad investigations of utility practices from 1928 to 1935.[109] The findings of that investigation led Congress to pass the Public Utility Holding Companies Act. The FTC's conclusions can today again form the basis for further federal or state enforcement or legislative reforms.

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[106] Letter from Investors, Ceres, Sept. 11, 2019. Accessed Jan. 8, 2023. https://www.ceres.org/sites/default/files/FINAL%20Letter%20Generic%20Investor%20Expectations%20on%20Climate%20Lobbying.pdf

[107] Joe Smyth, David Pomerantz. "Major Investors Find Electric Utilities Are Not on Track to Meet Decarbonization Goals." Energy and Policy Institute, March 24, 2021. https://www.energyandpolicy.org/investors-utility-decarbonization/.

[108] Center for Biological Diversity et al, Petition for FTC Investigation, June 14, 2022. https://www.biologicaldiversity.org/programs/energy-justice/pdfs/FTC-Petition-Re-Utilities-2022-05-16.pdf

[109] Federal Trade Commission: "FTC Milestones: Making the case for reform of public utility holding company laws." Nov. 18, 2014. Accessed Jan. 9, 2023. https://www.ftc.gov/enforcement/competition-matters/2014/11/ftc-milestones-making-case-reform-public-utility-holding-company-laws

VI. Electric cooperative boards and Municipal utility boards

Unlike investor-owned utilities, municipally-owned utilities and cooperative utilities do not have shareholders who can foot the costs of political influence activities - customers of the munis and coops pay these costs exclusively, whether they support the political activities or not.

Boards of Directors of municipal and cooperative utilities should take the following actions to protect customers:

1. Pass directives prohibiting or limiting[110] the expense of utility funds on any political influence activities, including efforts to influence regulation, legislation and ordinances of all types, influence elections or referenda, influence the approval of franchises, influence public opinion about policy matters or the company itself, influence the decisions of public officials at local, state and federal levels of government, or pay trade association dues involved in any of these political influence activities.

2. Pass directives prohibiting the expense of utility funds on reputational advertising or charitable expenses.

3. To the extent Boards of Directors limit (but do not prohibit) any of the above activities, they should require the utility's general manager to publish disclosures detailing the utility's political influence activities.

[110] Public power entities may wish to carve out an exception, which is to allow the utility to spend funds on advocacy to defend against privatization efforts.

ENERGY AND POLICY INSTITUTE

The Energy and Policy Institute is a watchdog organization working to expose attacks on renewable energy and counter misinformation by fossil fuel and utility interests.

energyandpolicy.org