

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Center for Biological Diversity)

Docket No. RM21-15-000

**MOTION TO INTERVENE AND COMMENTS OF
THE OFFICE OF THE NEVADA ATTORNEY GENERAL,
BUREAU OF CONSUMER PROTECTION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ the Office of the Nevada Attorney General, Bureau of Consumer Protection (“BCP”) hereby moves to intervene and comment on the Petition For Rulemaking To Amend The Uniform System of Accounts’ Treatment of Industry Dues proposed by the Center for Biological Diversity (“CBD”) in the above-captioned proceeding. The BCP supports CBD’s Petition to recategorize dues for industry associations from Account 930.2 to Account 426. In support of its Motion to Intervene and Comments, the BCP states as follows:

I. IDENTIFICATION OF PARTY

The BCP operates within the Nevada Attorney General’s Office pursuant to NEV. REV. STAT. § 228.310 and represents the interests of Nevada utility consumers before FERC pursuant to NEV. REV. STAT. § 228.360. As the state-designated agency charged with protecting the interests of Nevada’s electric and natural gas ratepayers, the BCP is interested in ensuring that utility costs that are recovered from ratepayers are squarely within the interest of providing service to customers. The dues collected by Nevada’s electric and natural gas customers to cover trade association membership affect the rates passed through to Nevada utility consumers for natural gas and electric service. Accordingly, the BCP represents consumer interests which may be directly affected by the outcome of this proceeding. Therefore, the BCP moves to intervene in the

¹ 18 C.F.R. § 385.214 (2011).

proceeding to represent the interests of Nevada utility consumers and submits that its participation in the proceeding is in the public interest pursuant to Rule 214.²

II. COMMUNICATIONS

All correspondence or communications regarding this proceeding should be addressed to the following individuals, and such individuals should be included on the official service list maintained by the Secretary for this proceeding:

Michelle C. Newman
Senior Deputy Attorney General
Bureau of Consumer Protection
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1164
MNewman@ag.nv.gov

Paul E. Stuhff
Senior Deputy Attorney General
Bureau of Consumer Protection
Office of the Nevada Attorney General
8945 W. Russell, Suite 204
Las Vegas, NV 89148
T: (702) 486-3490
PStuhff@ag.nv.gov

III. BACKGROUND

On March 17, 2021, the CBD, pursuant to 18 C.F.R. § 385.207 and the Administrative Procedure Act, 5 U.S.C. § 553, petitioned the Commission to amend the Uniform System of Accounts (“USofA”) requirements for payments to industry associations engaged in lobbying or other influence-related activities. The Commission issued a Notice of Petition for Rulemaking on March 25, 2021, setting the due date for comments and interventions as April 26, 2021.

In its Petition, CBD describes the role and purpose of the USofA. According to the Petition, fees and dues for membership in utility trade associations are recovered in Account 930.2, where

² 18 C.F.R. § 385.214 (2011).

there is a presumption of recovery for costs included in that Account.³ Instead, CBD proposes that trade association dues should be recovered in Account 426, where costs in that Account are presumed unrecoverable.⁴ CBD argues that, under *Janus*,⁵ allowing the recovery of trade association dues is the equivalent of forced speech as trade associations, which utilities fund, engage in political activities that ratepayers should not be forced to fund.⁶

IV. MOTION TO INTERVENE

The rates Nevada utility consumers pay for electric transmission and natural gas jurisdictional transportation services will be directly affected by CBD's petition for rulemaking. Therefore, the BCP has a direct and substantial interest in this proceeding that will not be adequately represented by any other party. The BCP seeks leave to intervene in this proceeding with the right to address any and all issues that may affect Nevada ratepayers' interests.

V. COMMENTS

A. BCP Agrees with CBD that Trade Association Fees Should be Re-allocated

In its Petition, CBD describes several activities that utility trade associations perform on behalf of its utility members.⁷ It notes that the associations use member fees to engage in lobbying activities as well as fund other groups that engage in lobbying and advocacy on behalf of utility member companies.⁸

The Public Utilities Commission of Nevada ("PUCN"), through NEV. ADMIN. CODE §§ 704.640 and 704.650, has adopted the USofA for natural gas companies and electric power companies. Nev. Rev. Stat. § 703.191 mandates that each public utility regulated by the PUCN file

³ Petition For Rulemaking To Amend The Uniform System of Accounts' Treatment of Industry Dues, Docket No. Docket No. RM21-15-000, filed Mar. 17, 2021, at 2 (F.E.R.C.) [hereinafter *Petition*].

⁴ *Id.*

⁵ *Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018).

⁶ *Petition*, at 26.

⁷ *Id.* at 1.

⁸ *Id.* at 10-12.

annual reports to the PUCN and each affected governmental entity. For all natural gas companies and electric power companies in Nevada, these reports are based on the accounting principles outlined in the USofA. As such, the USofA plays an integral role in the regulation of Nevada natural gas and electric utilities both in how the information is presented to the PUCN and how it is presented to other governmental entities. By virtue of including trade associations costs and dues in Account 930.2 where those costs are presumed recoverable, the burden shifts from the utility companies to other groups, including the BCP, to argue against including these costs in rates. Instead, BCP agrees that trade association costs should be included in an account – Account 426 – where the utility has to justify inclusion of these costs rather than the other way around. Consumer advocates like the BCP do not have the same amount of resources available to them as private companies like utilities. By treating trade association costs as presumed non-recoverable, customers are prevented from being required to pay for costs and dues that act against the interests of the customers.

In a recent Nevada rate case, Nevada Power Company d/b/a/ NV Energy (“Nevada Power”) identified over \$340,000 in recoverable costs due to memberships associated with Edison Electric Institute (“EEI”).⁹ EEI identified a percentage of those dues were for influencing legislation, and that amount was removed from Nevada Power’s cost recovery. Even though Nevada Power reduced the total amount sought for rate recovery by the percentage identified by EEI, that reduction only applies to influencing legislation. As the Petition details, groups like EEI engage in activities beyond lobbying and influencing legislation.¹⁰ Furthermore, it is the utility’s duty to justify these expenses, not for the BCP to argue against recovery of these costs.

⁹ *In the Matter of the Application of Nevada Power Company, d/b/a/ NV Energy, filed pursuant to NRS 704.110(3) and (4), addressing its annual revenue requirement for general rates charged to all classes and customers, Docket No. 20-06003, Volume 19 of 25, filed June 1, 2020, 86-92 (Nev. P.U.C.).*

¹⁰ *Petition*, at 12-14.

Account 930.2 allows for recovery of “the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.”¹¹ This includes “Industry association dues for company memberships.”¹² However, Account 426.4 covers influencing public opinion and public officials, and is not presumed recoverable.¹³ The BCP agrees with CBD that the services offered by trade associations, like EEI, are more than mere membership dues. Efforts by groups like EEI go beyond the expectations in Account 930.2 and better fit the description of Account 426.4. Even though groups like EEI have identified a portion of their costs influence public officials, groups like EEI provide their members with more information and strategy than “influencing,” and provide support and tactics for their members to act against the wishes of states and customers. The BCP believes that costs for trade associations, like EEI, should no longer be recoverable. This will result in savings to Nevada’s customers.

B. Allowing Utilities to Recover Trade Association Costs is Inconsistent with the Supreme Court’s Finding in *Janus*

The continuation of this accounting structure, whereby fees and dues for membership in utility trade associations are recovered in Account 930.2, is inconsistent with Nevada ratepayers’ constitutional rights. Instead, requiring all trade association dues to be recorded in Account 426 is a necessary amendment that protects Nevada ratepayers – and ratepayers nationally – from being “coerced into betraying their convictions” through compelled subsidizations of political activities.¹⁴ In *Janus*, an Illinois law forced nonconsenting public employees to pay union dues, even if the public employee did not want to join and did not agree with the union’s positions.¹⁵ These partial union dues for nonmembers were called agency fees and, in *Janus*, included fees that

¹¹ 18 C.F.R. § 101 (2011).

¹² *Id.*

¹³ *Id.*

¹⁴ *Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2464 (2018).

¹⁵ *Id.* at 2459-60.

supported lobbying, social and recreational activities, litigation, and other ambiguously described union services.¹⁶ The United States Supreme Court determined that it was a violation of the First Amendment for the State to compel public employees who were not members of the union “to subsidize private speech on matters of substantial public concern” through the forced payment of agency fees.¹⁷ Not only was “[c]ompelling individuals to mouth support for views they find objectionable” a violation of the First Amendment, but the Supreme Court reasoned that “[c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.”¹⁸ Noting that speech “occupies the highest rung of the hierarchy of First Amendment values” and merits “special protection,” the forcing of free and independent individuals to endorse ideas they find objectionable through the payment of agency fees was not only demeaning, but according to the *Janus* Court, illegal as a violation of the nonunion members’ First Amendment rights.¹⁹

Allowing the recovery of trade association dues by a utility effectively forces Nevada ratepayers to subsidize the political speech of a utility trade association in violation of Nevada ratepayers’ First Amendment rights. As in *Janus*, where the United States Supreme Court held that the forced payment of agency fees used to support a union’s political activities violated the First Amendment, recovery of trade association dues used to fund political and lobbying expenses of a utility trade association violate ratepayer’s constitutional rights. Ratepayers pay utility rates because they are seeking to receive basic electric and natural gas services to their homes and businesses. Ratepayers, like nonconsenting union members, do not pay for the service of a utility for the purpose of supporting political speech; nor should the political interest of a utility trade

¹⁶ *Id.* at 2460-61 (internal citations omitted).

¹⁷ *Id.* at 2460, 2486.

¹⁸ *Id.* at 2463-64 (emphasis in original) (internal citations omitted).

¹⁹ *Id.* at 2464, 2476, 2486 (internal citations and quotations omitted).

association be forced upon the ratepayer. This is especially concerning because utilities function as government regulated monopolies, leaving ratepayers with no other meaningful choice but to pay for the utility trade association’s political speech simply by purchasing electricity or gas. As such, the First Amendment rights of ratepayers are violated when they are forced to pay rates for services that are then used to support political speech that may be in conflict with the ratepayers’ own values or beliefs. Like in *Janus*, requiring the ratepayer to betray their own conscience and subsidize the political position of a utility trade association is the same as forcing a nonunion member to pay agency dues. Therefore, the USofA should be amended so that Nevada ratepayers – and ratepayers nationally – are not footing the bill for lobbying and other political speech on behalf of utility trade associations.

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VI. CONCLUSION

Based on the foregoing, the BCP requests leave to intervene in this proceeding and provide comments in support of the Petition For Rulemaking To Amend The Uniform System of Accounts' Treatment of Industry Dues as requested by CBD. The Commission should support CBD's Petition and open a rulemaking to consider changes, as proposed, to the accounting treatment of utility trade association dues. The BCP agrees with CBD that those dues should not be recovered through customer rates, and assigning those dues to a different account where those costs are non-recoverable through customer rates is in the public interest.

Respectfully submitted,

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION

ERNEST FIGUEROA
Consumer Advocate

By: /s/ Michelle C. Newman
Michelle C. Newman
Senior Deputy Attorney General
Bureau of Consumer Protection
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1164
MNewman@ag.nv.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the MOTION TO INTERVENE AND COMMENTS OF THE OFFICE OF THE NEVADA ATTORNEY GENERAL, BUREAU OF CONSUMER PROTECTION upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Carson City, Nevada, this 23rd day of April, 2021.

By: /s/ Michelle C. Newman
Michelle C. Newman
Senior Deputy Attorney General
Bureau of Consumer Protection
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1164
MNewman@ag.nv.gov

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