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September 30, 2025

Via E-Filing

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: MPSC Case No. U-21870

Dear Ms. Felice:

Please find enclosed the Accompanying Exhibits UCC-75 to UCC-97 for the Direct Testimony of Sergio Cira-Reyes on Behalf of Urban Core Collective (Part 6 of 6), along with proof of service, for electronic filing in the above-referenced matter.

Please do not hesitate to contact my office with any questions or comments.

Sincerely,

Mark N. Templeton, *pro hac vice*
6020 S. University Avenue
Chicago, IL 60637
Phone: (773) 702-9611
Email: templeton@uchicago.edu

xc: Parties to Case No. U-21870

Edison Electric INSTITUTE

About EEI

Our Mission

The Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide safe, reliable electricity for nearly 250 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 70 international electric companies as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums.

Our Vision

EEI will be the best trade association.

We will be the best because we are committed to knowing our members and their needs. We will provide leadership and deliver services that consistently meet or exceed their expectations.

We will be the best because we will attract and retain employees who have the ambition to serve and will empower them to work effectively as individuals and in teams.

Above all, we will be the best trade association because, in the tradition of Thomas Edison, we will make a significant and positive contribution to the long-term success of the electric power industry in its vital mission to provide electricity to foster economic progress and improve the quality of life.

Commitment to Transparency for Funding and Activities

EEI's member companies are among the most regulated companies in the country, and EEI engages on their behalf with federal and state legislators, regulators, and other policymakers through lobbying, advocacy, and regulatory proceedings, with the goal of providing customers affordable, reliable, and resilient clean energy.

In addition to the detailed disclosures required by federal law, EEI voluntarily produces an annual Lobbying, Advocacy, and Other Expenditures report that outlines our funding and activities and is responsive to the information needs of our member companies and their regulators.

Read the 2025 Lobbying, Advocacy, and Other Expenditures report.

Location

EEI is conveniently located at the corner of 7th Street and Pennsylvania Avenue in NW Washington, D.C. We are located in the heart of Penn Quarter, only five blocks from the U.S. Capitol Building.

BY METRO

BY CAR

EEI TRAVEL DISCOUNTS PROGRAM

Visitors are encouraged to use Metro—D.C.'s subway system—to reach EEI. The Archives-Navy Memorial-Penn Quarter stop on Metro's Yellow and Green Lines is located directly in front of the EEI building.

MORE INFORMATION

Parking in EEI's building is approximately $30 per day. EV charging is available.

GET DIRECTIONS

Several Washington, D.C., area hotels offer discounted guest room rates to representatives and staff of EEI member companies, international affiliates, and associates.

TRAVEL DISCOUNTS

Contact Us

If you need more information on a specific issue or are unable to find what you are looking for, please contact us.

GENERAL INQUIRIES

- **Web site comments and questions**
  feedback@eei.org

EEI MEMBERS

- **Associate Membership**
  associates@eei.org
- **International Membership**
  international@eei.org
- **U.S. Shareholder-Owned Electric Companies**
  members@eei.org

OTHER INQUIRIES

- **Daily Energy News**
  EEIonline@eei.org
- **Electric Perspectives**
  EP@eei.org
- **Energy Talk**
  EnergyTalk@eei.org
- **Issue Communities**
  engage@eei.org
- **Publications/All Other Subscriptions**
  EEIOrders@eei.org

701 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004-2696

202-508-5000

About MEGA

Our Mission: To advance the common interests of investor-owned electric and natural gas utilities in Michigan for better service to cust shareholders, and the public.

Our Story

The Michigan Electric and Gas Association (MEGA) is a trade association established in 1984 to provide a collective voice in Michiga government and public affairs for its board member investor-owned electric and gas utilities. MEGA works with the Michigan legislature, fe and state regulatory agencies and the entire Michigan energy industry to assure safe, reliable and affordable electric and gas utility service.

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Positively Impacting the Industry

MEGA serves as a forum for industry communication and information exchange on matters of public policy, legal issues, legislation and util service. MEGA has coordinated joint member and industry filings in regulatory proceedings before the Michigan Public Service Commissior court cases. Input from committees and workgroups is used to identify issues and develop consensus positions. MEGA actively sponsors anc sponsors industry conferences and meetings.

Get in Touch

Send Us a Message

Give Us a Call (517) 484-7730

(517) 484-7730
7201 W. Saginaw Highway, Suite 305, Lansing, MI 48917

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MISSION

THE MOST INFLUENTIAL VOICE FOR BUSINESS IN MICHIGAN

As the Great Lakes State's leading statewide business advocacy organization, the Michigan Chamber of Commerce is on the job every day, standing up for job providers in the legislative, political and legal arenas while working to build a stronger Michigan for all. We are the unified voice of approximately 5,000 member businesses of every size and industry in all 83 counties as well as trade associations and local chambers of commerce, collectively employing over a million Michiganders.

THE CHAMBER IS DRIVEN BY THREE KEY PILLARS:

1. **TO PROTECT: POWERFUL, EFFECTIVE ADVOCACY**
Being the voice of business by advancing member priorities through legislative, legal and political action, and pragmatic problem solvers that help build a stronger, thriving Michigan for all.

2. **TO CONNECT: STRONG NETWORK OF RESOURCES & OPPORTUNITIES**
Providing access to a diverse statewide business network, policymakers and subject matter experts and offering free or discounted webinars, professional development or trainings and events on the most in-demand or pressing issues.

3. **TO STRENGTHEN: PROVEN, INNOVATIVE BUSINESS SOLUTIONS**
Providing members and customers with high-quality products and services to help them succeed, save money and bolster their bottom line.

CONTACT US

Whether it is advocating for you at the MI State Capitol or providing resources and business solutions that fit your needs, it is our goal to serve you. Please let us know how we can help.

First Name*

Last Name*

Company name*

Email*

Mobile phone number*

How can we help?*

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Michigan Chamber of Commerce
600 S. Walnut St. | Lansing, MI 48933
517-371-2100 | info@michamber.com

New Public Power TAKEOVERS

Strategic Resources for Defeating Municipalization

Edison Electric Institute

Defending Your Shareholder-Owned Electric Company Against New Municipalization

THREATS

A Tactical Guide

Authors:

Jonathan Kaufman, Executive Vice President, Solem & Associates

Anne B. Solem, Executive Vice President, Solem & Associates

Solem & Associates, a San Francisco, California-based public relations agency, has provided public affairs consulting and political campaign management services to energy companies and utilities for more than 25 years. Municipal takeover is a core specialty of the agency. The agency also represents clients on land development, environmental, health care and transportation issues, and provides general communications/media services. Solem & Associates is a partner in the Worldcom Public Relations Group, an international network of independent public relations agencies.

Solem & Associates
550 Kearny Street, Suite 1010
San Francisco, CA 94108
415-788-7788

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New Municipalization Threats

Municipalization campaigns—aimed at taking over local electric companies—are popping up around the country as a growing number of communities weigh the public power option. For the shareholder-owned electric companies that are facing municipalization threats, it is often extremely difficult to communicate the message that establishing a new government-owned utility in today's deregulated energy environment is costly and risky. That's because these companies are encountering local officials and customers who believe that they are paying more than they should for electricity and that taking over the local electric company's distribution system will help residents and businesses survive in a volatile energy marketplace.

So, what's a shareholder-owned electric company to do if a municipalization threat arises in its local service territory? What would you do?

When defending against a new public power takeover, there's no doubt that you'll need a solid, multi-faceted strategy. This Tactical Guide discusses the various steps you can take to nip a takeover in the bud using community education and legislative advocacy and outreach (Tab I). It outlines the basic building blocks needed to inform and assist elected officials and opinion leaders, to organize allies, and to engage the public debate about the purported benefits of public power as a solution to energy issues in your community (Tab II). If all else fails, this Guide details what you need to do to defeat a public power takeover at the ballot box (Tab III).

Because it is intended for use in a wide range of circumstances in various parts of the country, this Guide may not be specific to the particular issues facing your community. You should study the strategies and tactics discussed herein and adapt them to fit your local requirements. We encourage you to study the sample messages and campaign materials that are included in Tabs IV and V and to tailor them to your situation.

Materials in this Guide are organized under the following tabs:

PREVENTING

A New Public Power Takeover Threat From Emerging

Preventing a New Public Power Takeover Threat from Emerging

The best way to avoid harm is through prevention. But prevention requires the implementation of long-term strategies well in advance of a crisis. When dealing with a new public power threat, your overarching goal is to keep the takeover effort from reaching the ballot box. But, ideally, you'd like to avoid the threat altogether by resolving issues early on. The key is to educate opinion leaders about the problems and pitfalls of public power takeovers so that the issue never gains traction in your community.

The push for takeover often begins with a small group of activists. Most of these activists have been seduced by the false notion that municipalization will automatically lead to benefits and therefore have been promoting municipalization efforts for many years without success. In some cases, a takeover effort can begin with a public official, a city manager, a local administrator, or council member who may be motivated by a city budget deficit or the idea that taking over the electric system could become a source of revenue for the community. Whatever the initial motivation, any concerns about deregulation, rate increases or power problems will give takeover a higher profile in the community.

A successful avoidance strategy may allow you to nip the movement in the bud. Such a strategy is two-fold:

1) Provide elected officials, community leaders and customers with credible, factual information about how well your electric company and the current system are operating and how a takeover effort is fraught with financial risks and other hazards.

2) Identify and recruit allies who can help you convince local decision makers that takeover is not a viable option in today's volatile energy marketplace. If influential and credible community and business leaders believe takeover is not a viable option, the takeover idea can be derailed before it becomes a specific proposal that is brought before the local legislative body or electorate for action.

7 Tactics for Implementing an Avoidance Strategy

1) **Identify and build alliances with other utility companies, civic and business organizations, and public officials.** Identify the key opinion leaders in your service area. Determine who your potential allies are in the fight against takeover. For example, gas, telephone and cable companies are natural allies since their assets also may be threatened, either now or in the future, by municipal takeover. Other potential allies may include local chambers of commerce, major industrial and commercial customers, shareholders, company employees and retirees, union leaders, and agricultural interests. Non-utility allies are very important to your cause because they do not appear to be self-interested or motivated.

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2) **Meet with elected officials and key staff.** Some public officials oppose municipalization because they recognize the inherent problems — particularly the financial risks — that come with creating a new government-owned utility in today's energy world. Other public officials may oppose takeover as a bad business practice. Spend some time talking with your public officials — both elected and appointed — to determine their views on takeover. Once you know where they stand, what they think, and what they know or don't know, you can provide them with specific information and materials that support your anti-takeover position.

   Make sure that public officials understand the fiscal and community benefits your company brings to the community. This provides an opportunity to educate decision makers and to dispel common misunderstandings about your company's operations or about municipalization. These conversations help you determine who may be for you or against you if and when a takeover issue emerges. Many public officials who are not particularly well informed about municipalization will appreciate the opportunity to become more familiar with this complex issue.

   Finally, don't limit your contacts to your local community alone. Meet with county supervisors, state legislators and members of Congress from your area. Don't forget to meet with their staff members too, especially those who work at the local level. These staff members often are politically active and can wield significant influence on major issues. And, remember to tap in to other regional resources and institutions, such as economic development commissions and university experts that may have an inrerest in this issue.

   Be brief and focused during your meetings. Be sure to cover all your key points, and be prepared to answer all questions, including potentially hostile questions, so that you won't be caught by surprise.

3) **Explore unusual alliances.** A union that may not be that friendly to your company under ordinary circumstances may decide to oppose a public power takeover because it will mean a loss of jobs or jobs moving to a rival union. Major customers may complain about rates, but ultimately would prefer the certainty of working with an established energy company rather than being subject to the problems that may occur with a new municipal utility operating in the deregulated marketplace. Other groups attempting to issue tax-free bonds may be severely impacted by state bond caps. Still others who depend on local government for financial support may feel threatened by the prospect of local revenue going into the electric system. Non-traditional allies may be powerful friends and influencers on your behalf.

4) **Research and create persuasive messages.** Persuasive messages — the key points of argument on behalf of your position — are the foundation of any successful outreach program. Public opinion polling at this early stage is important. It will give you an idea of what the community really thinks about your company, the local government agency and the idea of takeover. These views may differ from what your company thinks the community believes.

   At this early stage, you can talk about how well the current system operates and about the benefits your company brings to the local community, including jobs and tax revenue. You can also create messages that explain the problems inherent with a new takeover and that address risk and problems elsewhere.

Once you've developed a set of core messages, adapt them for each key constituency with whom you will be communicating. The messages will vary because you will be speaking to the specific interests or concerns of each group. For example, the interests and concerns of the business community may be different than those of your labor allies. But all messages should reflect the basic facts.

5) **Develop multiple ways to get your message out to potential allies.** Identify key civic and business organizations and begin an outreach program. In addition to one-on-one meetings, develop a speakers program to address civic groups like the Rotary and Kiwanis clubs, business groups like the Chamber of Commerce, seniors, and, in agricultural areas, the Farm Bureau and other similar organizations. Try to develop some visual elements for your presentation. Also develop fact sheets and other materials that you can leave behind. The goal of these presentations and meetings is to educate opinion leaders about the problems inherent in a new takeover.

6) **Intensify community outreach programs.** Expand your community outreach programs. Your company may have an active charitable program in the community; it may work with the schools; it may provide special services to low-income and/or elderly residents; it may contribute to a variety of civic activities. Remind folks of this. All of these outreach activities are benefits to the local community, and the organizations with whom your company interacts are potential allies. It may not be appropriate to ask a particular organization to actively support your position, but each organization is made up of individuals who may become active on your behalf. It's up to you to reach out and provide them with the information they need to understand the issue.

7) **Intensify advertising programs.** Explore ways to use your company's ongoing marketing program to tout the benefits the company brings to the local community. Use advertising to talk about these benefits and to highlight important community programs. Feature charitable activities in newsletters and bill inserts. Include a section on community benefits in each presentation you make — whether it's a speech to the local civic organization or a presentation to the city council.

Despite your best efforts, the avoidance strategy ultimately may not be successful, and you may find that the takeover issue is moving to a larger and more politically potent forum. However, the work that you have done to this point is not wasted, as educational and community outreach will only help your company in the long run.

BLOCKING

A Municipalization Takeover Attempt At The Local Legislative Level

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Blocking a Municipalization Takeover Attempt at the Local Legislative Level

If the avoidance strategy has failed to keep the takeover issue from reaching the local legislative body, then it's time to step up the intensity of your program. The work your company may have already undertaken provides a good foundation for a more intense and targeted program to defeat a takeover vote by the pertinent legislative body. Now it's time to organize allies, develop a media relations campaign, expand and supplement written materials, and begin lobbying the local decision-making board.

In this section, a variety of tactics is discussed. While not all will be appropriate or relevant to your company's situation, you should remember that it is likely the takeover issue will move to the ballot box, whether by a local legislative vote or by petition. So, the activities you initiate now will lay the groundwork for a future political campaign.

At this point, your overall strategy is to build a broad-based community coalition that will be effective in opposing any takeover move by the local legislative body. Remember that it takes time to build an effective lobbying effort; so the earlier you start organizing, the better. Don't wait until an agenda item is being scheduled. The time to start is when you first suspect that the backers of takeover are gaining sufficient momentum to bring the issue to the attention of the legislative body.

10 Tactics for Blocking a Municipalization Takeover Attempt at the Local Legislative Level

1) **Determine whether a takeover effort has "traction."** It is not always easy to distinguish a serious takeover threat from an effort that has no real support. In this situation, access to information is the key. It is important to talk with your government and community allies and contacts and to monitor media reports so that you can recognize if and when a takeover effort is gaining momentum.

   Once the takeover issue has traction, one or more of the following occur, often rather rapidly:

   - Elected officials and influential community members associate themselves with takeover advocates at public events and in the media.
   - Takeover advocates launch major fundraising initiatives or spend money on direct mail campaigns or advertising to communicate with voters. Many states require groups that spend money to qualify a measure for the ballot to register as a political action committee.
   - Advocates initiate signature-gathering events to qualify a municipalization proposal for the ballot.
   - Major newspapers editorialize either for or against a change in the local electric power distribution system.

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- Elected officials or candidates introduce or advocate legislation to facilitate a municipal takeover.

2) **Retain an experienced public affairs/political consultant.** At this point, it is important to retain a public affairs/political specialist with direct experience in defeating public power takeovers or other ballot measures. During the avoidance phase, your company's local government or community relations staff likely handled much of the work. Perhaps a public affairs/political specialist provided some strategic advice. But now, with the issue moving closer to a vote, a public affairs/political consultant is invaluable in laying out a strategy to defeat takeover at the local legislative level, if at all possible, and in setting the stage for a possible election campaign. Now is also the time to begin analyzing how much a takeover would cost.

3) **Form a broad-based citizens' coalition.** A coalition of local opinion leaders and other citizens often is the most effective means of convincing a legislative body either to take a particular action or not to take it. Most local elected officials are very sensitive to and responsive to constituent opinions. Look at your list of allies and identify influential community leaders. If your state or municipality requires that political contributions be reported, look to see who the major donors to local elected officials are. From these and other sources, identify those opinion leaders and influencers who might be interested in heading up a citizens' coalition in support of your company's position. Coalition leaders often will agree to serve as community spokespersons for the group with the media and at various meetings and events.

4) **Grow your coalition and have it represent as broad a cross section of the community as possible.** With the leadership in place, other members can be recruited at speaking engagements, public meetings and through mailings. Your company's employees, retirees and shareholders make good coalition members and may have contacts with other community leaders. The coalition membership also should include allied organizations such as the Chamber of Commerce and affected unions.

   It is important to have a one-page fact sheet and perhaps more detailed information to hand to potential endorsers. Company representatives and coalition leaders should carry a stack of endorsement cards with them to hand out at meetings, events and speaking engagements. Ask leaders of allied organizations to pass out endorsement cards to their members. Be sure to print a key message on the endorsement card. Remember, you can increase your response rate by collecting signed cards from people at the time you hand them out or by including a return postage stamp on the card so that it can be mailed back easily. Make sure you have included a telephone number, an e-mail address and/or a website address on the card for endorsers and potential supporters to obtain additional information and to have questions answered. Be sure to ask endorsers for their e-mail addresses, as e-mail is an effective and inexpensive way to communicate with your supporters.

5) **Conduct early public opinion research.** Public opinion research serves four purposes:
   - Research establishes a baseline level of support for and against takeover.
   - Research helps identify the segments of the community with whom your company needs to communicate to build support for its position.
   - Research helps you to identify effective messages and to develop a successful communications strategy.

- Research allows you to test the opposition's messages and determine which are the most important to rebut. The information derived from research will be helpful in directing and shaping your efforts to defeat takeover.

Determine whether focus groups would also be useful. Focus groups normally are used prior to polling to develop messages and to determine how groups of community members and voters may react to issues. Work closely with your public affairs/political consultant in developing the questionnaire for the poll so that you are sure it tests all that you need to know. Your consultant may point out additional areas and issues that should be tested.

6) **Develop informational materials.** Once you have tested your messages and your position through focus groups and opinion research, you can begin to prepare communications materials for your various activities and audiences. Typical materials include:

   - A **media information packet** with background information, press releases, a list of supporters, key facts, brief examples of troubled takeover efforts and any other information that may be pertinent and persuasive with the media.
   - **Leave-behind information** that you can hand out when you make presentations or speeches before various groups. The leave-behinds can be as simple as a one-page fact sheet, a brochure or a packet similar to the media kit that includes a list of supporters and other pertinent information.
   - A **brochure** that can be given to supporters to share with friends and neighbors. The brochure also can be included in the leave-behind packet.
   - **Talking points and speech outlines** for supporters to use when making presentations, recruiting supporters and talking to elected officials.

7) **Establish a website.** Increasingly, individuals are turning to the Internet for political information. In today's world, a website is another key communications vehicle. It is important to get your site up and running early, perhaps even as early as the first-phase avoidance strategy. A website often is the first place a potential supporter looks for information about your issue. Reporters and editors will use it for background information and to see what press releases and other media information you have posted. And, a website is an effective way to collect endorsements. You can use a website to communicate with and organize your supporters quickly and effectively. You can use e-mail to refer supporters to the website for new information.

   Be sure your site is easy to navigate and contains up-to-date information. Post new information regularly and establish links to other websites that support your position.

8) **Orchestrate a comprehensive media campaign.** A well-organized media campaign is an essential component of any successful lobbying effort. Be sure to provide accurate information and pithy quotes to reporters. Point out that public power entities would face the same problems that the present electric company faces but with the added burden of takeover costs. Identify several community and business leaders who are willing to serve as spokespersons for your company. Try to keep the community leadership out in front of reporters. Your community supporters can be much more effective with the media than perhaps your company's own spokesperson. Be sure to provide media relations training for these spokespersons if necessary. Your media program should be designed to have its greatest impact right before any vote on takeover.

Key media activities include:

- **Editorial board briefings.** Make sure you meet with the editorial boards — or for smaller papers, the editor or publisher — of your local newspapers to present your views and facts on the takeover issue. Have two or three key community leaders as part of your group so that the editors can hear both from your company and from the community on the takeover issue. Prepare a packet of pertinent information to leave with editors. Keep the presentation brief.

  Some radio and television stations also broadcast editorials on key issues and perhaps one or more stations still do that in your community. If so, be sure to meet with the public affairs director or the station manager (the two individuals who are most likely to be involved with the editorial process) and present your position as you did with the newspapers.

- **Opinion editorials.** Opinion editorials or columns are an excellent way to communicate your position or to rebut arguments presented by opponents or by the newspaper's editorial writer. Opinion editorials or columns are more effective if prominent citizens in the community author them. Again, stick to your messages, and make your arguments in a clear and readable manner. The opinion editorial should be lively to keep reader interest. Don't waste space repeating the claims of opponents. State your own case.

- **Letters to the editor.** Ask one or two of your supporters to organize a letter-to-the-editor campaign. Depending on how many individuals are participating, have the letters appear regularly in the newspapers and have the campaign build up to the local government hearing on takeover. Remember, many editors will try to make sure that there's a balance of opinions and will not print letters advocating one viewpoint unless they can print letters supporting an opposing view. As a result, it may be wiser not to have a letter-to-the-editor campaign if the opposition has been silent. You just might trigger unwanted activity by your opponents.

- **Reporter briefings, media events and stories.** Don't overlook opportunities to make news on your issue. One way to make news and provide third-party credibility to your company's point of view with the general public is to develop various reports and studies that analyze the risks and costs involved in a new public power takeover. Perhaps a local business organization will undertake such a study on the economic impact or feasibility of takeover and its impact on electric rates. It is preferable that the studies come from an independent group rather than your company. Ask your allies to hold a press conference to announce the results of the study and share the study's findings with public officials, editorial writers, and key community and business leaders who still may be on the fence regarding takeover. Put the work of others to work for your side of the issue.

  Take the time to give a background briefing on these key issues. Don't assume reporters really understand the takeover issue and other issues related to electric power. Another news making opportunity is for the citizens' coalition to issue press releases about presentations and speeches its leaders are making and to announce additional members, especially if the new members are influential in the community.

9) **Lobby public officials.** Once you have your citizens' coalition in place, have your facts to back you up and know which messages are the most persuasive, it's time to meet with those who will vote on the takeover issue. Tell them about the risks associated with new takeovers. Remind them of the benefits your company brings to the community. Share the broad base of support you have been able to develop in the community. Find out what else they need to know to cast their votes for your side. Have supporters write letters, e-mail and telephone the elected officials. It is important that they hear from their constituents because constituents are the most persuasive lobbying force you can bring to bear. Continue to count your votes. Remember, your opponents will be working just as hard on the other side, and someone who seemed to be a secure vote one day might flip-flop the next.

10) **Build supporter attendance at key local government meetings.** Make sure your supporters turn out for all public hearings and meetings on the takeover issue. One idea is to have supporters wear buttons or tags that indicate they oppose takeover: "No takeover" and "Takeover is a BAD Idea" are just two examples of button messages. Undoubtedly, you will come up with a message that fits your specific situation.

    If the meeting is a public hearing where individuals in the audience may speak, organize your supporters so that they have a variety of points to make during the hearing. Provide them with talking points and background material. Make sure they understand what the procedures are for public comment. If a decision isn't made at the meeting, ask your supporters to follow up individually with the elected officials to thank those who supported the anti-takeover position, to encourage fence-sitters to move to your side, and to initiate another round of contact with those who are voting for takeover. It is important to keep reminding the elected officials favoring takeover of the large and influential group of constituents who oppose it.

In the end, despite all of your efforts and hard work to persuade your elected representatives that takeover is a bad idea, you may find that the issue continues to gain support and that the local leaders decide to move the issue to a public vote. Again, the work you have done in the lobbying phase will not be wasted. Your organizational outreach, written materials and media program all can be put to good use as you prepare to defeat a takeover attempt at the ballot box.

DEFEATING

A Municipalization Takeover Attempt At The Ballot Box

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Defeating a Municipalization Takeover Attempt at the Ballot Box

It's time to mount a full-scale election campaign against a new public power takeover. Are you ready? Most of the tactics/activities we have discussed earlier also are used in a full-scale campaign. Please refer back to Tabs I and II for more detail on a particular tactic. And please don't forget to look at Tabs IV and V for sample messages and materials. Remember, a campaign to defeat takeover is going to be difficult. Generally, takeover advocates don't go to the ballot box unless they think they can win. You can't get your campaign started too early. As soon as you realize a takeover measure is going on the ballot, gear up.

20 Tactics for Defeating a Municipalization Campaign at the Ballot Box

1) **Hire an experienced campaign consultant.** If you didn't hire an experienced campaign consultant during the lobbying phase, now is the time to bring one in as part of your team. For the campaign, you will need a consultant who can provide a variety of services through his/her firm or one who can put together a team of consultants to work on your behalf. Don't fool yourself into thinking that you can do all of the work in-house. A successful campaign requires specialized skills in the areas of research, general advertising, direct mail, voter targeting, message development, and, most important, campaign strategy and positioning. Establish regular (weekly or at least biweekly) meetings with the consultant(s) so that you understand the work they are doing on your company's behalf.

2) **Form a registered political committee as required by state and/or local law.** Most states and many local jurisdictions require political campaigns to register and to begin disclosing campaign contributors and expenditures no later than when a measure qualifies for the ballot. **It is critical that you consult legal counsel with expertise in local and state campaign law.** Understand what is required and make sure those in charge of your campaign follow the requirements to the letter. In addition to costing you money in fines, failure to adhere to the law can cost you credibility, lead to negative news coverage and perhaps cost you the election. Depending on the laws in your jurisdiction, you may be able to establish campaign committees and other legal entities to carry on separate specific campaign functions. For example, in some states, specialized third-party committees can send out direct mail independent of the main campaign committee and are not required to report contributions with the primary campaign committee. These independent entities usually reflect a broader base of support and function separately from the primary committee or your company itself. The name you give your campaign committee is important. Choose a name that is both inclusive and incorporates the campaign's major theme or message.

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Tab II

Tab III

3) **Develop a campaign plan and allocate necessary resources.** Once you know where you stand from your research, develop a campaign strategy and implementation plan that will lead you to victory on Election Day. Identify who your key voter targets are. Are they, for example, seniors? Middle-age men? Republicans? Homeowners? Who are the likely supporters of takeover that you will not want to spend as much effort targeting? Are they Democrats? Activists? Women? Renters? Latinos? Who are the swing voters you will need to win over on Election Day? Are there specific neighborhoods in your community that are more likely to support your position? Your opinion research and analysis of previous voting patterns should be invaluable in developing a voter-targeting program.

4) **Begin to raise money for the campaign.** Campaigns are expensive and your fundraising efforts must begin immediately. A campaign could be lost because of startup delays resulting from lack of funds. While your company may be prepared — and expect — to put up all or at least the majority of the campaign war chest, it is important to develop a broader funding base for the campaign to demonstrate the breadth of your support. Look to your allies to contribute. Gas companies, cable companies, telephone service providers, and other local utilities may be future targets for municipalization and should be asked to contribute to your effort. Your less-likely allies, such as labor unions, also should be approached. And, the campaign can organize a small-contributors program through which community members and business leaders can participate. With community members, you should not be interested in the amount of their donations, but rather the number of donations, as they demonstrate a broad base of support. If financial contributions from these other constituencies are not possible, make sure they officially endorse the campaign and play other roles that enhance their visibility on the issue.

5) **Conduct exhaustive public opinion research.** Comprehensive public opinion polling is essential in a political campaign. Even if you conducted research during the lobbying phase, roll out another poll to see where voter opinion is now. This poll should target voters only and can test a variety of messages and arguments. Opposition arguments can be tested to determine weak spots. Periodic tracking polls show how the campaign is doing as it moves closer and closer to Election Day and enable you to develop, refine or modify your messages. The more detailed discussion regarding public opinion research found under Tab II also is applicable here. Other uses of polling are noted below.

6) **Determine which of your arguments are most effective with each target voter group and how you are going to deliver those arguments to the key voter blocs you are trying to reach.** Your campaign won't be able to persuade all voters so it should be designed to reinforce the core anti-takeover base and to sway those voters who are identified as swing votes or who still are undecided. This is the job of your campaign consultant. Also, you need to know how much a successful campaign will cost so that you can budget and raise the needed funds. If funds are limited, a campaign plan can help you decide where best to spend your limited resources. Is it best to work on absentee voters or on a get-out-the-vote program? Is a direct-mail program likely to bring in more votes than television advertising? These are the questions you have to answer very early in the process so that you can marshal your resources most effectively.

An essential part of campaign planning is a **voter-behavior analysis.** Your consultant can examine prior voter behavior to help focus the campaign on those voters who are most likely to support you. Targeting voters is particularly important for message delivery (through direct mail) and for the Get-Out-The-Vote program.

7) **Develop alternative pre-feasibility studies.** Proponents of takeover will cite studies that show takeover will be good for the local municipality. However, it is likely these studies are not feasibility studies at all but only "pre-feasibility" studies that look at all the alternatives available to the local jurisdiction and indicate that takeover is worth considering. A true feasibility study is a detailed examination of exactly how much it will cost to take over your company's distribution system and whether rates will have to be increased to cover the cost of takeover. It also provides an outline of the process and details how long it will take to get to the end.

   Make sure you have developed your own studies or white papers **authored by credible, independent, third-party experts if at all possible**. Quote excerpts from the studies in your mail and advertising. Share the material with reporters and editors. Use the information to expand your supporter base and to recruit additional allies. Even if you don't conduct a feasibility study of your own, it is important to criticize and point out the shortcomings of the proponents' studies. By supporting takeover, the voters may be taking on more burdens than they suspect. See Tab VI for a list of consultants who have experience in conducting feasibility studies.

8) **Develop key messages and a campaign theme.** Because you have been debating takeover issues for a long time, you will have a host of arguments that you believe should persuade voters to oppose takeover. Your campaign consultant may come up with some new, fresh arguments. Use your research program to test all these arguments with voters. Some arguments may resonate better with certain types of voters. Perhaps older voters may respond better to cost issues, while small business owners may be concerned about reliability of service. Republicans are likely to respond to different concerns than Democrats. **But you have to test to be sure.** Once you understand which arguments and messages work best for specific voter groups, you can design your communications to convey those messages directly to the voters through targeted direct mail. Broader themes and messages — ones that resonate with most voters — can be the basis for other forms of communication including newspaper advertising (and radio and television, if you can afford it) and can be used in debates and larger community presentations.

   Your research should also lead you to an overarching, persuasive campaign theme, and one that resonates with everyone. From the theme, develop a short, snappy and memorable tagline. Be sure to use the tagline in all your materials. Examples of effective taglines include "Stop Government Bureaucracy," "Energy Experts, not Politicians," or "Too Risky, Too Costly."

9) **Update and expand materials.** Many of the materials you have already developed are useful for this campaign. Look at all your materials and see which should be discarded and which simply need to be updated. This includes your media information packets, leave-behind information for meetings and presentations, brochures and fact sheets, and the packet for speakers including talking points and speech outlines. Add new supporter lists, updated fact sheets and additional information on cost issues. Make sure your materials reflect the themes and messages your research has shown to be the most effective. Develop a campaign logo to go with your new tagline and incorporate it into all materials. Sample materials are found under Tab V.

Tab IV
Tab V
Tab VI

10) **Don't forget about your website.** Be sure to keep your website up to date with new information, dates of campaign presentations, additional endorsers and other relevant information. Include sections for those who wish to sign up as endorsers and for those who wish to give contributions to the campaign. Keep your website fresh so that people have a reason to keep returning to it.

11) **Reactivate your citizens' coalition and identify and recruit community spokespersons.** If you haven't already organized a citizens' coalition, now is the time to do so. (Please refer to Tab II for more specific information.) If you already have a citizens' coalition actively opposing takeover, move that coalition into a campaign mode. Identify those coalition leaders who are willing to be the public face for the coalition and the campaign. This means they will be spokespersons on behalf of the campaign and will have to take a more active role by participating in press conferences, representing the campaign at political and community meetings and making speeches before civic and business groups.

    Continue your efforts to expand the coalition. Ask coalition members to recruit others. Begin a fundraising campaign that targets small-contribution donors. Please note that some of the organizations and businesses that may have supported your position during earlier phases now may be concerned about being caught up in a campaign battle. Business groups are wary of alienating customers. Civic groups may have policies against participating in campaigns. If some organizations and businesses cannot endorse officially, ask the members if they will help you as individuals rather than as representatives of the organization.

12) **Develop and implement a media program.** The elements of a comprehensive media program are discussed in detail under Tab II. If you don't have an active media program, organize one. If you have let your media outreach program lapse, reactivate it. Look at what new information you can provide editors and reporters. Perhaps it's time for another **background briefing**. Share studies and white papers with reporters. Give them the complete documents, not just excerpts. Update the media information packet, and send it to all reporters and editors on your list. Work with your campaign consultant to develop new ideas for press events. Inform the media of key endorsements as they occur and include an endorsement list in the media kit.

    Develop **opinion editorials** and draft **letters to the editor**. Then ask your community supporters to personalize them and submit them to the local newspapers. (Please note that the campaign staff can submit the opinion editorials and letters to the editor on behalf of the community supporters, but it is important that each person who agrees to sign an article or letter have the opportunity to participate in its drafting. Some may just wish to sign off on something that has already been prepared. Others may prefer to add their own ideas — which is fine as long as the ideas are consistent with campaign messages.)

    Don't assume that just because you met with **editorial boards** during the avoidance or lobbying phases that you don't have to meet with them again during the campaign. Schedule meetings with all editorial boards and ask them to support your campaign in an editorial.

13) **Implement a speakers program and organize community outreach activities.** You may have organized a speakers program during the avoidance and/or lobbying phases of your anti-takeover effort. If so, you may have a core group of speakers whom you can ask to go out on the circuit again. If you need to recruit new speakers, look to your citizens' coalition for individuals to take on this task.

Review and update your list of political, civic and business organizations. Assign someone on the campaign staff to contact each organization and ask if a campaign representative can make a presentation at an upcoming meeting. Recruit speakers and match them to the organizations. Make sure everyone has updated talking points and speech outlines. All speakers should have leave-behind materials (enough for each attendee) and endorsement cards to distribute at each speaking engagement. If the organization typically endorses campaigns, send your strongest speakers (preferably a member of the organization) to seek the endorsement.

If your campaign has the resources and manpower, **organize neighborhood coffees and house parties**. Coffees and house parties are useful to recruit supporters and volunteers to work on the campaign. Each event generally follows these steps:

- A host is identified by the campaign and that host agrees to invite friends to his or her home or an easily accessible and casual neighborhood location.
- The host mails letters to all frequent voters in the neighborhood or precinct inviting them to the event.
- At the event, the host introduces the campaign representative who speaks for no more than 15 minutes and then answers questions.
- At the end of the talk, the campaign representative asks for endorsements and for volunteers to hold additional house parties or to walk precincts.
- After the event, the host sends a follow-up mailing to everyone who was invited that informs the voters about the key points that were made and why it is important to oppose takeover on Election Day.

If the campaign staff decides to organize coffees and house parties, try to cover as many neighborhoods in the community as possible.

14) **Implement voter contact programs.** Another way to reach out to voters is to have volunteers **walk precincts**. Volunteers are provided with a list of voters who have been targeted by the campaign as worth contacting. Volunteers walk their assigned precincts during the last four-to-six weeks of the campaign, providing information about the anti-takeover campaign and asking whether the voter supports or opposes takeover. The information is recorded and entered into a database that is used to get out supporters on Election Day. Company employees and union members make excellent precinct walkers.

While walking precincts is the most effective thing volunteers can do, in some areas it may be difficult to reach voters. In these cases, **phone banks** should be implemented. Volunteers are recruited to call targeted voters. If enough volunteers cannot be recruited, paid phone banks are used. Voters who are contacted are given a brief pitch on the issue and are asked if they have a position on takeover. Again, the information is recorded and entered into a database for future use.

15) **Implement an absentee voter program.** In many areas, absentee voting is increasing in popularity with more and more voters using absentee ballots as a way of voting more conveniently than going to the polling place on Election Day. Because absentee voters can return ballots weeks before Election Day, it is very important to make contact with these voters early in the campaign — before they cast their vote. Most campaigns now execute an absentee voter program as a basic campaign activity.

Tab I

Tab II

Tab III

It may be possible to find out which voters have voted absentee or are listed as permanent absentee voters. In addition to targeting voters who naturally vote absentee, you should urge all your supporters to vote absentee if that is allowed in your area. Voting absentee ensures that those votes are cast and will be counted no matter what happens on Election Day.

Absentee voter programs have two main components. The first is to encourage those voters whom the campaign has identified (through precinct walks and phone banks) as supporters to vote by absentee ballot. Mail an absentee ballot application to all identified voters early in the campaign. Include a campaign brochure or other material with the application form. Most campaigns now make the form part of a piece of direct mail. (See Tab V for a sample.)

The second component of the absentee voter program is to make sure the targeted voter actually returns the application and subsequently returns the completed ballot. The election office in your community will supply the campaign with a list of those voters who have applied for absentee ballots. This information is a matter of public record. Usually, the campaign will have to pay a small fee to cover the costs of compiling the lists. Your campaign won't be the only one asking for absentee applicant lists; it's a common tactic in today's campaign world. The next step is to follow up with mail to those absentee voters the campaign believes it can persuade. In addition, organize a phone contact program for absentee voters. You also can track those absentee voters who have not returned their ballots. If targeted voters fail to return the ballot by mail in sufficient time to be counted, the campaign phone bank should contact the voters and ask them to turn in their ballots at their polling place.

16) **Design the campaign's advertising program.** A major portion of the campaign budget will be allocated to the advertising and direct mail programs. While you may have worked hard to obtain media coverage with media events, opinion editorials and letters to the editor, advertising ensures your messages will be conveyed exactly as you want. (Remember outdoor signs, billboards, and bus and taxi signs generally only build awareness; it is difficult to use them to convey complex or emotional messages.)

Outdoor signs. Outdoor signs are a cost-effective way to make sure your message is seen throughout your community. Typically, outdoor signs come in two forms: window and lawn signs that supporters can post at their homes or in store windows, and signs that are posted by a professional political sign company along the community's main streets. Since these signs are small (even house and lawn signs have limited space), the message should be pithy and simple. Often the campaign's tagline works well. Be sure to use graphics that are easy to read at a distance and don't try to say too much on the sign. A message such as "Don't waste our $$. Vote No on Measure X" with the campaign logo is more than sufficient. Make an effort to get signs posted in the store windows of local merchants as well as in the front windows or yards of all your endorsers. This demonstrates the grassroots nature of your campaign.

Billboards. In some communities, billboards are another good way to promote your campaign. Again, billboard messages need to be simple (not too many words), to the point and easy to read. Be sure to look at each billboard that is being offered by the outdoor sign company as some may be in locations that aren't useful to you or may be difficult to read either by those walking or in cars or buses.

Bus and taxi signs. Bus and taxi signs also can be a good campaign investment if they are used in areas where they will have high visibility. The same criteria apply in regard to readability, visibility and message.

Newspaper advertising. Newspaper ads can be a very effective advertising medium. In many communities, voters — especially those who have yet to make up their minds about the issue — look at newspaper ads that list endorsers to see who in the community is supporting or opposing a particular ballot proposition. If community leaders they respect are listed on the endorsement ad, the voters often will follow their lead. Newspaper ads usually are run during the last two weeks of the campaign when voter attention has turned to the upcoming election.

Radio and TV ads. Radio and television advertising also can be very effective, but can be more costly. If money is available, a well-written radio ad campaign can be very persuasive while also being cost effective. Some of the best political ads on radio are humorous. They catch the listener's attention and make a telling point using humor. Because of that, they remain memorable. Radio ads usually are run during drive time and on sports shows and popular talk shows.

Television advertising may or may not be cost effective or affordable, depending on your media market and the effectiveness of television advertising to your target audiences. If the campaign can afford television and chooses to use it, the campaign should retain a specialist in political television advertising to help you get the best impact for your money. Don't hesitate to spend money on production. A well-written and well-produced spot generally increases its effectiveness.

Ads should be tested prior to placement or airing. Remember, all advertising and direct contact (mail) efforts should be integrated with the messages of the overall campaign and not conducted in a vacuum.

17) **Design and implement a targeted direct mail program.** A general rule of thumb is that a campaign should send at least three pieces of direct mail to targeted voters. This mail is in addition to whatever mail may have been sent out by the campaign for the absentee voter program or field operation (precinct walks and phone banks). Direct mail allows the campaign to target messages to specific voter groups. The research program will help you determine which messages are most effective for each targeted voter group. A basic direct mail package likely would include: an education piece that presents the case against takeover and dispels common myths; a second piece that is focused on endorsers and key issues; and a third which can serve as a get-out-the-vote piece or, if necessary, a response to attacks or claims by takeover proponents. Additional pieces with more specific messages and arguments also can be sent to targeted voters if the campaign has the funds. If your community includes ethnic groups with significant numbers that speak other languages, you may want to produce bilingual mail pieces (and newspaper/radio/TV ads).

18) **Use slate cards.** Another way to reach voters is by slate cards. Political groups and some campaign professionals publish slate cards to promote one or more candidates or ballot measures. Depending on your community, slate cards can be useful and cost-effective tools. Because third parties produce them, slate cards can add breadth of support to your campaign. Depending on the laws in your jurisdiction, it may be possible for a friendly third party or campaign consultant to create a slate card that takes positions on your measure and others.

19) **Implement an Election Day Get-Out-The-Vote program.** Using the information gathered during precinct walks and phone banks, an organized Get-Out-The-Vote (GOTV) effort can make the difference between winning and losing on Election Day. The basic strategy is to make sure anti-takeover voters get to the polls by monitoring polling places to see which of the identified voters have not yet voted. These voters are then telephoned by campaign volunteers and urged to go out and vote. Sometimes a GOTV effort also includes driving elderly voters or others who have difficulty getting to the polls.

20) **Thank your volunteers.** Be prepared on election night with winning and losing statements for the media. And, win or lose, don't forget to thank your volunteers and the community leaders who have assisted you during the campaign. Host a party on election night or shortly thereafter to recognize and thank them.

A final note: Keep records of who your endorsers and supporters were and how precincts voted. Even if you won this time, you may have to defend your company again in the future from another municipalization takeover campaign.

Sample Campaign MESSAGES

Sample Campaign Messages

Following are some sample message points[1] compiled to give you an idea of the various arguments that your company can develop to defend against a new municipalization threat. Please feel free to take these ideas and adapt them to your local circumstances. Tab V contains examples of fact sheets, flyers and other materials that have been used successfully in past anti-takeover campaigns. You can see from the sample products how we've adapted the message points to work in persuasive materials.

Here are 10 simple messages that you can use in your anti-takeover campaign:

1. A new public power takeover will be costly and is fraught with hidden risks and uncertainties.

2. A takeover would involve the electric company's distribution system only; city governments still will have to buy their own power in the deregulated wholesale market.

3. New government-owned utilities are not immune to the ongoing transformation of the electric power industry.

4. Those communities that seek to take over distribution systems would have to purchase entire systems at today's market prices.

5. Municipalization means more bureaucracy and less protection for consumers.

6. Municipalization can lead to higher electricity rates and poorer customer service.

7. Creating a new government-owned utility is not realistic or economically viable in today's new energy environment.

8. Local government inefficiency and inexperience in managing an electric company could lead to a deterioration of service.

9. A takeover may adversely impact other city services.

10. The established publicly owned utilities cannot be replicated today because the conditions under which public power was created in the early years of the 20th century no longer exist.

[1] These messages are excerpted from our study *Municipalization in a New Energy Environment: It Doesn't Work*, prepared for the Edison Electric Institute, September 2002.

Tab V
Tab VI

Here are 10 more detailed messages that you can tailor for use in your anti-takeover campaign:

1. Municipalization is a movement whose time has passed. Conditions that worked for public power in the early 20th century no longer exist. Federal limits on municipal bond financing, the absence of additional low-cost federal preference power, the fully built-out nature of many of today's electric distribution systems, and the newly deregulated wholesale power market all nullify any advantages that may be available to older municipal utility districts, public utility districts and electric cooperatives.

2. Local officials have other options available to help consumers manage their electric energy costs, including aggregation, power pooling and providing incentives for efficient use of energy.

3. A crucial factor in the early development of public power systems was the availability of low-cost federal "preference power," electricity generated primarily by hydroelectric dams built by the federal government during the first half of the 20th century. Hoover Dam and Grand Coulee Dam, for example, were built by the federal government and they generated far more electricity than was needed by the small communities located near them. The federal government sold surplus electric capacity at low prices to other entities—primarily government-owned electric systems in the West—that needed the electricity. Today, however, that low-cost federal electricity is all spoken for, committed under long-term contracts for decades into the future. Any excess federal hydropower that is available can be purchased only at current market prices, not at the below-market preference rates.

4. There are very large expenses and risks associated with municipalizing that are hard to predict accurately. The full cost of a takeover and its impact on electricity prices may not be known until it's too late. Unless a comprehensive, detailed feasibility study is completed before the measure is put on the ballot, voters won't know what the impact of takeover will be—on their electric bills or on their local government's budget. In the end, the final costs of takeover may be so large that they actually require that a city raise electric rates to cover the expense.

5. New municipal utilities will have no advantage in the deregulated wholesale marketplace. Indeed, the cost of purchasing distribution systems likely would create severe financial burdens from the onset. Most important, a government takeover doesn't address the root cause of the problems that have fueled much of the municipalization fever to begin with—flawed retail market rules, supply shortages and transmission constraints.

6. Today's newly deregulated wholesale electricity markets are difficult to navigate. And, new government-owned utilities will have to purchase power at market prices or acquire generation capacity. But even experienced players have been fooled by fluctuations in the market. Public officials who are not energy experts may make serious and costly mistakes that will be paid for by local consumers—in the form of higher rates or higher taxes.

Example: Rural Lassen County in California organized its electric utility district in 1988, much later than most of the other municipal utilities in the state. Unable to secure long-term discounted federal power, Lassen was forced to rely on other sources. When the energy crisis hit in 2000, the district had no long-term power purchase contracts in effect. As a result, in 2001, the district was forced to raise rates 70 percent. Rates would have increased 162 percent if Lassen had not been able to persuade a neighboring utility district to pick up a significant portion of Lassen's load.

7. Municipalization may require a city or town to assume large amounts of new debt, which can lead to the downgrading of the city's or town's bond rating. This may cause other activities funded by bonds, like roads and schools, to become more expensive or even obsolete.

8. Shareholder-owned electric companies pay taxes and franchise fees; government agencies do not. This loss of revenue is permanent and not a one-time cost. It must be factored into the cost of takeover. Taxes paid by shareholder-owned electric companies include income taxes to federal, state and local authorities where applicable, property taxes to local authorities and franchise fees to local authorities. The loss of this income must be determined and included as lost revenue to various taxing authorities. How will this revenue be made up—new taxes?

9. The takeover process typically takes years. By the time all studies are completed, legislation is passed, voter approval is obtained and outstanding lawsuits are settled, as many as 10 years may have passed. During this period, circumstances change and the original impetus for the takeover may no longer be a factor. The energy market conditions that sparked the takeover movement may be quite different than they were. This uncertainty itself should be a major red flag for those considering takeover.

   Example: The town of Las Cruces in New Mexico and El Paso Electric Company battled for more than 12 years on a proposed municipalization before reaching a settlement – the town ultimately opted not to municipalize.

10. Establishing a new government-owned utility requires adding a whole new layer of public bureaucracy. Moreover, it is unlikely that a local government will be able to manage an electric system better than a shareholder-owned electric company with experienced staff. If experienced utility staff decide not to transfer to a new, municipal entity, linemen, troubleshooters, maintenance and repair crews, emergency service workers, billing clerks and customer service representatives, among others, would have to be hired and trained. Cities may discover it a tremendous challenge to run an electric system.

Sample Campaign

MATERIALS

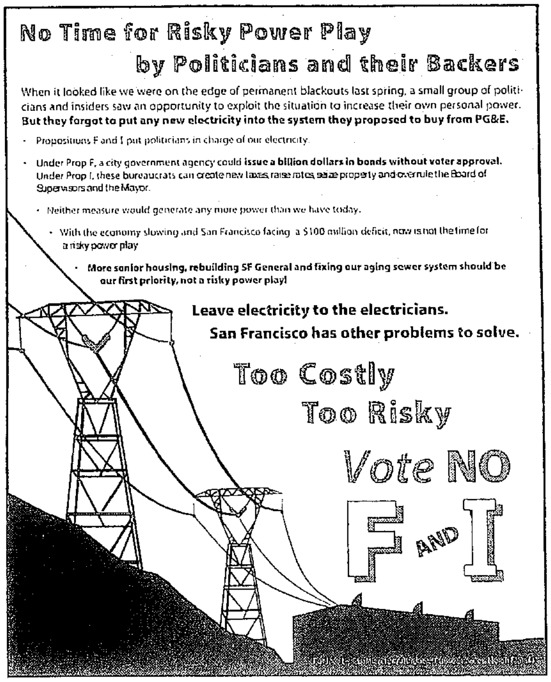
Tab V

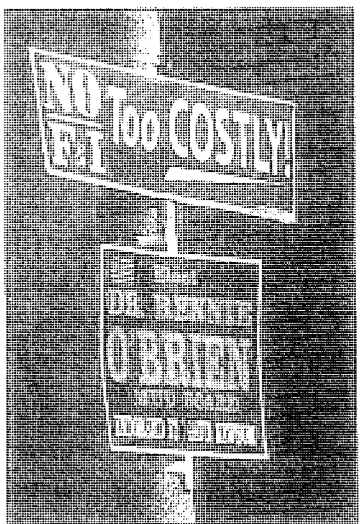
Tab VI

Sample Campaign Materials

News ad

This is a full-page newspaper ad used successfully to oppose two takeover measures that were on the San Francisco ballot in November 2001.



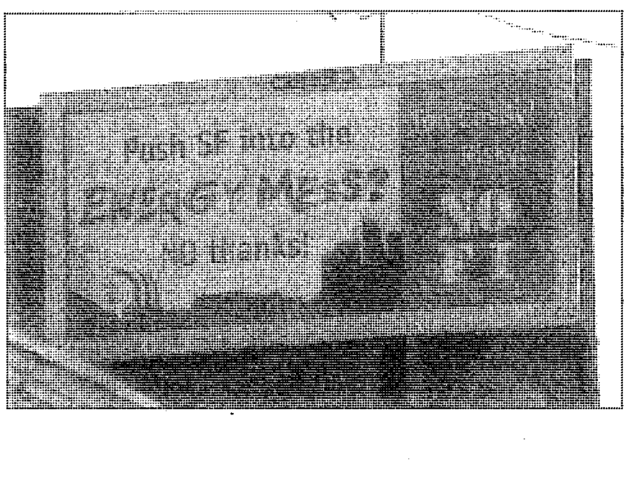


Street sign

This is a street sign used in the same campaign. Note the unifying theme of "Too Costly, Too Risky".

Billboard

Billboards can help reinforce your message.



NO ON POLITICS AND BUREAUCRACY

NO on F and I

Proposition F and Measure I both would put costly new layers of government bureaucracy in charge of a basic necessity. They would put San Francisco utility customers at risk and do nothing to solve our energy problems.

- **Politicians in Charge** – The people with authority over our utility service would be politicians. There is no requirement that board members have any experience or expertise in utilities.
- **Voters Lose** – The City Water and Power Agency would sell $800 million to $1 billion or more in bonds without voter approval to buy out PG&E's power lines and poles in San Francisco. The bonds would have to be paid back by utility customers in their bills in addition to the cost of the energy they use.
- **No Solution** – Taking over PG&E does nothing to increase the amount of power. More electricity is what's needed to solve our energy problem. Most of the power the City needs would have to be purchased on the open market, putting utility customers at risk.
- **Higher Rates** – Newer municipal utilities without long term power-purchase contracts have higher rates. Lassen increased rates 49 percent and avoided a 162 percent increase only by turning some of its customers away to another utility.
- **Caution** – Act carefully. Do we really want a government-run utility system? Vote for solar energy, Propositions B and H – a better idea than F and I.

Vote NO on F & NO on I in San Francisco NO on I in Brisbane

Yes, I want a solution to our power problems, not more costly bureaucracy!

☐ I want to become a member of the Coalition for Affordable Public Services.
And here's my contribution of $______ to CAPS!

☐ Yes, you may use my name. Signature: ______________

Name: ______________ Phone: ______________
Address: ______________ Fax: ______________
City/ST/Zip: ______________ Email: ______________

Coalition for Affordable Public Services
Two Embarcadero Center, #200 • San Francisco, CA 94111

A Coalition of Neighborhoods, Businesses Large and Small, Pacific Gas & Electric Co., Labor and Consumers

反對"F"和"I"條案

在 Brisbane

CAPS.

Coalition for Affordable Public Services
Two Embarcadero Center, #200
San Francisco, CA 94111

Leaflet

This leaflet, in English and in Chinese, was used both to convey information and recruit supporters.

Support card

The use of support cards like this one enables a campaign to get permission to use someone's name publicly as an endorser. Another idea is to use a postage-paid reply card to make it easy for supporters to respond.

☐ **YES, I oppose the Municipal Utility District in San Francisco.**

Coalition for Affordable Public Services (CAPS)
Two Embarcadero Ctr.
Suite 200
San Francisco,
California 94111

NAME: ______________
ADDRESS: ______________
PHONE (H): ______________
PHONE (W): ______________
FAX: ______________
EMAIL: ______________

☐ **YES, you may use my name publicly.**

SIGNATURE: ______________

Your Return Name & Address: ______________

20¢ STAMP NEEDED

Coalition for Affordable Public Services
Two Embarcadero Center, Suite 200
San Francisco, California 94111

Printed on Recycled Paper

Absentee ballot

Once you have identified people who are committed to voting your way, you should encourage them to vote by absentee ballot. This is an absentee ballot request form produced by the campaign but with the specifications required by law.

PG&E Corporation.
P.O. Box 770000
San Francisco, CA 94177

PRSRT STD
US POSTAGE
PAID

PROTECT YOUR INVESTMENT

Vote by Mail Application for:

November 6, 2001 General Election

Application not paid for at taxpayers' expense.

APPLICATION FOR AN ABSENTEE BALLOT
NOVEMBER 6, 2001 CONSOLIDATED MUNICIPAL ELECTION
and the (potential) December 11, 2001 Run-Off Election

To obtain an absentee ballot, complete the information on this form. This application must be received no later than 5:00 p.m. on Tuesday, October 30, 2001.

1. PRINT NAME: ____ First Name ____ Middle Name ____ Last Name

2. DATE OF BIRTH ____ Month - Day - Year

3. PRINT RESIDENCE ADDRESS: ____ Number and Street (P.O. Box, Rural Route, etc. not acceptable) ____ City / State ____ Zip Code

4. TELEPHONE NUMBER: ( ) ____ Daytime ( ) ____ Evening

5. PRINT MAILING ADDRESS FOR BALLOT (IF DIFFERENT FROM ABOVE).
NOTE: Organizations distributing this form may not preprint mailing address information.
____ Number and Street / P.O. Box (Designate N, S, E, W if used) ____ City ____ State or Country ____ Zip Code

THIS APPLICATION WILL NOT BE ACCEPTED WITHOUT THE PROPER SIGNATURE OF THE APPLICANT
I have not applied for an absentee ballot for this election by any other means. I certify under penalty of perjury under the laws of the State of California that the name and residence address on this application are true and correct.

____ Signature ____ Date

WARNING: Perjury is punishable by imprisonment in state prison for two, three or four years. (Section 126 of the California Penal Code)
This form was provided by PG&E Corporation • P.O. Box 770000 • San Francisco, CA 94177

FOR OFFICIAL USE ONLY

NOTICE
[illegible]

YOUR UTILITY IS UNDER ATTACK.

Just as Pacific Gas and Electric (PG&E) announced plans to emerge from bankruptcy, its San Francisco operations are being threatened. Proponents of Proposition F and Measure I on the city ballot this fall want the government to condemn and take over PG&E's electric wires, poles and equipment in San Francisco.

Under the guise of fixing the energy crisis, they want the government to take over the one part of the system that has worked well through the energy crisis: the local electricity distribution system.

You can act to stop this from happening. **Vote NO on Proposition F and NO on Measure I.**

Proposition F would enable politicians to approve $800 million to $1 billion or more in bonds without voter approval. Both Proposition F and Measure I would put a new layer of politicians in charge of electric service with no requirement that they have any experience or expertise in utilities.

You can vote from the convenience of your own home. Just sign and return the enclosed form. Do it today to make sure you get your ballot in time.

To Receive Your Ballot by Mail:

CHECK TO MAKE SURE YOUR FORM IS COMPLETE

SIGN AND DATE THE ATTACHED APPLICATION.

MAIL THE APPLICATION IMMEDIATELY. (no stamp necessary)

(Did you sign & date your application?)

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Letters

Here are sample pitch letters used to recruit supporters from targeted groups, in these cases utility company shareholders and local public officials.

PG&E Corporation.

Robert D. Glynn, Jr.
Chairman of the Board,
Chief Executive Officer,
and President

Mail Code B32H
P.O. Box 770000
San Francisco, CA 94177

October 9, 2001

Dear San Francisco and Brisbane Shareholders,

There are two measures on the November ballot this fall that threaten to harm you as a consumer of electricity and as a PG&E Corporation shareholder.

Proposition F in San Francisco and Measure I in San Francisco and Brisbane would start the process of municipal takeover of Pacific Gas and Electric Company's (PG&E's) electric system and replace it with a government-run electric utility.

- The energy crisis in California is being addressed by building new power plants to supply the energy we need. Taking over PG&E's local distribution system in San Francisco and Brisbane will do absolutely nothing to address the need for more power.
- Rates would not go down. The government agencies created by these two measures would have to pay PG&E more than $1 billion for our system. The money would come from revenue bonds issued without voter approval and paid back by electric customers in their regular monthly bills on top of the charges for electric service.
- The government utility would have to buy power. Currently, city-owned power is used to serve government operations and, through sale, hold down taxes. At best, only about a third of the electricity could come from city-owned sources. The rest would have to be purchased on the open market. The government-run utility and its customers would face the same risks that have plagued PG&E and the State of California.
- Customers would not be able to choose whether they stay with PG&E or be served by the government-run utility and PG&E would no longer be able to provide maintenance, repair and emergency electric services to its customers in San Francisco and Brisbane.

Proposition F and Measure I must be defeated. **Please support PG&E and your fellow consumers by VOTING NO on Proposition F in San Francisco and Measure I in San Francisco and Brisbane.**

Sincerely,

Robert D. Glynn, Jr.
Chairman, CEO and President

[SAMPLE LETTER TO A LOCAL OFFICIAL]

August 26, 2001

Honorable Councilwoman XXXX
Valley Grove City Council
City Hall
Valley Grove, CA 90000

Dear Councilwoman XXXX:

There has been much discussion lately about ways our community can weather the current energy crisis, including proposals to "municipalize" local utility services. You may recall that my colleagues and I met with you on this issue several weeks ago.

I understand that on September 11, the City Council will hold a public hearing on energy issues and may vote to appropriate $2.2 million to study the cost and feasibility of a municipal takeover of local power, telephone and cable systems. As the Chairwoman of the Valley Organizing Committee for Affordable Local Services (VOCALS), a coalition of more than 1,100 local residents and businesses, I am writing to express our strong opposition to the municipalization approach.

VOCALS members believe that any city takeover of utility would be a grave disservice to residential ratepayers and could have a disastrous effect on the local business environment. The study will be a waste of taxpayers' money and will do nothing to address the energy crisis or improve utility service. I am enclosing a fact sheet that provides information about why a municipal takeover would be a mistake for Valley Grove. We strongly urge your opposition to this costly and ill-conceived study, and hope that you and your colleagues will take this opportunity to reject the notion of putting essential city services in the care of a new city bureaucracy.

Several members of our organization will attend and testify on this issue at the upcoming hearing and share our views with the City Council. We remain available to answer any questions about this issue. Please do not hesitate to contact me if I may be of service.

Very truly yours,

Antonia Carrera
Chairwoman
Valley Organizing Committee for Affordable Local Services

Enclosure

Tab VI

Additional

RESOURCES

Consultants
Public Power Checklist

Additional Resources

Consultants

Following is a partial list of consulting firms that have been active in conducting municipalization feasibility studies.

R.W. Beck, Inc.
1001 Fourth Avenue, Suite 2500
Seattle, WA 98154
(206) 695-4700
**Conducts studies nationally for local governments*

CH2M Hill
6060 South Willow Drive
Greenwood Village, CO 80111
(303) 771-0900
**Conducts studies nationally for shareholder-owned electric companies*

EES Consulting
570 Kirkland Way
Kirkland, WA 98033
(425) 889-2700
**Conducts studies nationally for local governments*

Henwood Energy Services
2710 Gateway Oaks Drive, Suite 300
North Sacramento, CA 95833
(916) 569-0985
**Consults for businesses*

Navigant Consulting, Inc.
615 N. Wabash Avenue
Chicago, IL 60611
(312) 573-5600
**Consults for shareholder-owned electric companies*

Scientech RCI
4501 Indian School Road, N.E.
Albuquerque, NM 87110
(505) 244-7600
**Conducts studies for shareholder-owned electric companies*

Stone & Webster Division
The Shaw Group
8545 United Plaza Blvd.
Baton Rouge, LA 70809
(225) 932-2500
**Conducts studies nationally for shareholder-owned electric companies*

Public Power Checklist

Even if you are not currently threatened by a municipal takeover, it's a good idea to have an understanding of public power issues in your community.

✔ Study local government-owned utilities in your area.

- Compile a list of all government-owned utilities in your area or state.
- Determine the year each was established.
- Look at the average rate each charges. Be sure to use comparable figures.
- Analyze this information to see what facts stand out.
- If any of these districts were formed more recently than others, do they charge higher rates? Detail what is happening in those newer districts that make them different from older ones.
- Do the lower-cost public power entities have access to low-cost federal preference power currently fully allocated?

✔ Analyze feasibility studies that may have been conducted in your region, either commissioned by local government agencies evaluating takeover, or commissioned by shareholder-owned electric companies to counter takeover efforts.

✔ Compare the quality of service offered by local governmental agencies and by your shareholder-owned electric company.

- Is there a good story to tell?
- Are services currently provided by local government agencies well managed, safe, reliable and responsive? Look at municipal bus service, water service or others.
- How does the public feel about electric utility service? If electricity service is not a problem, should that service be put at risk by changing to a government-run system?

EDISON ELECTRIC INSTITUTE

Municipalization in a New Energy Environment

IT DOESN'T WORK

Prepared by:
Solem & Associates

Prepared for:
Edison Electric Institute

September 2002

Get The Facts About Our Nation's Publicly Owned Electric Utilities

FACT: Over 90% of Publicly Owned Electric Utilities Serve Fewer Than 20,000 Customers.

- The "average" municipal utility serves 9,260 customers.[1]
- According to the American Public Power Association (APPA), 1,733 municipal utilities – or 86.3% of the total number (2,009) – serve 10,000 customers or fewer, while 1,872 munis – or 93.2% of the total – serve 20,000 customers or fewer.[2]
- Only 24 municipal utilities – or 1.2% of the total number – serve more than 100,000 customers, while 65 munis – or 3.2% of the total – serve 10 customers or fewer.[3]

FACT: Over 1,500 Public Power Utilities Generate $10 Million or Less in Annual Revenue.

- Of the 2,009 municipal utilities, 1,523 – or 75.8% – generate less than $10 million in annual revenue; 569 munis – or 28.3% – generate less than $1 million.
- Only 72 public power utilities generate more than $100 million in annual revenue.

FACT: Over 1,900 of Our Nation's Public Power Utilities Were Formed Before 1960.

- According to APPA, the number of municipal utilities has not changed significantly since 1988.

Year	Number of Municipal Utilities[4]
1988	1,997
1989	1,994
1990	2,011
1991	2,007
1992	2,017
1993	2,007
1994	2,005
1995	2,014
1996	2,010
1997	2,013
1998	2,009
1999	2,012
2000	2,009
2001	Data not available as of 8/29/02

- More than 500 municipal utilities will have celebrated their 100-year anniversaries by 2005. That means 500 munis – or about 25% of the total number – were formed by 1905.[5]

---

[1] According to the Energy Information Administration, there are 2,009 municipal electric utilities in the U.S., serving a total of 18,604,131 ultimate customers (all residential, commercial, industrial, etc.).

[2] American Public Power Association, *2001 Annual Directory and Statistical Report.*

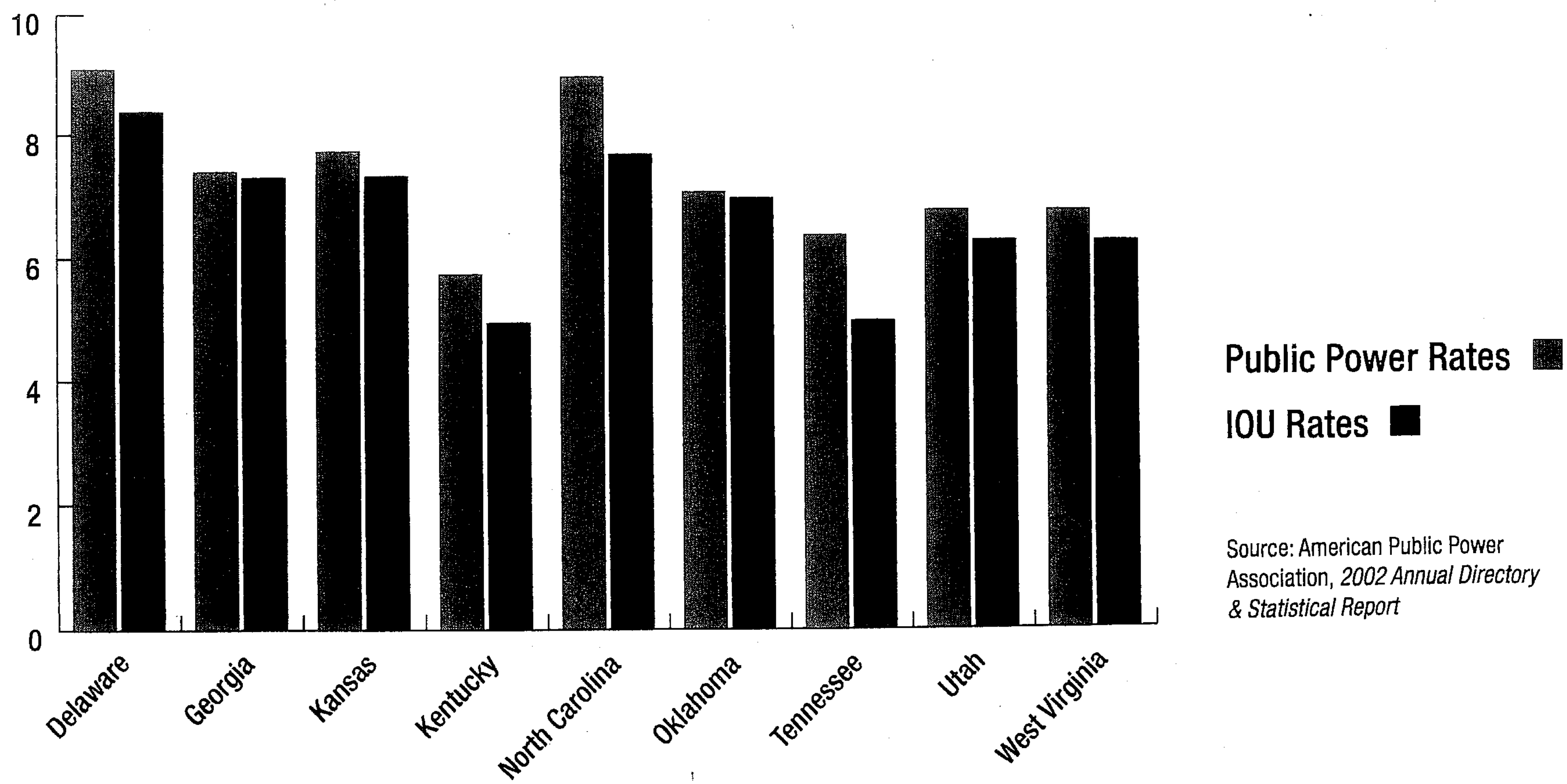
[3] Municipal utilities with less than 10 customers include joint action agencies and other wholesale utilities.

[4] Based on Energy Information Administration data in the publications *Electric Power Annual and Electric $ales and Revenue.*

[5] See, APPA Web site, www.appanet.org.

Some people say that public power is ALWAYS cheaper. According to APPA, this is not true.

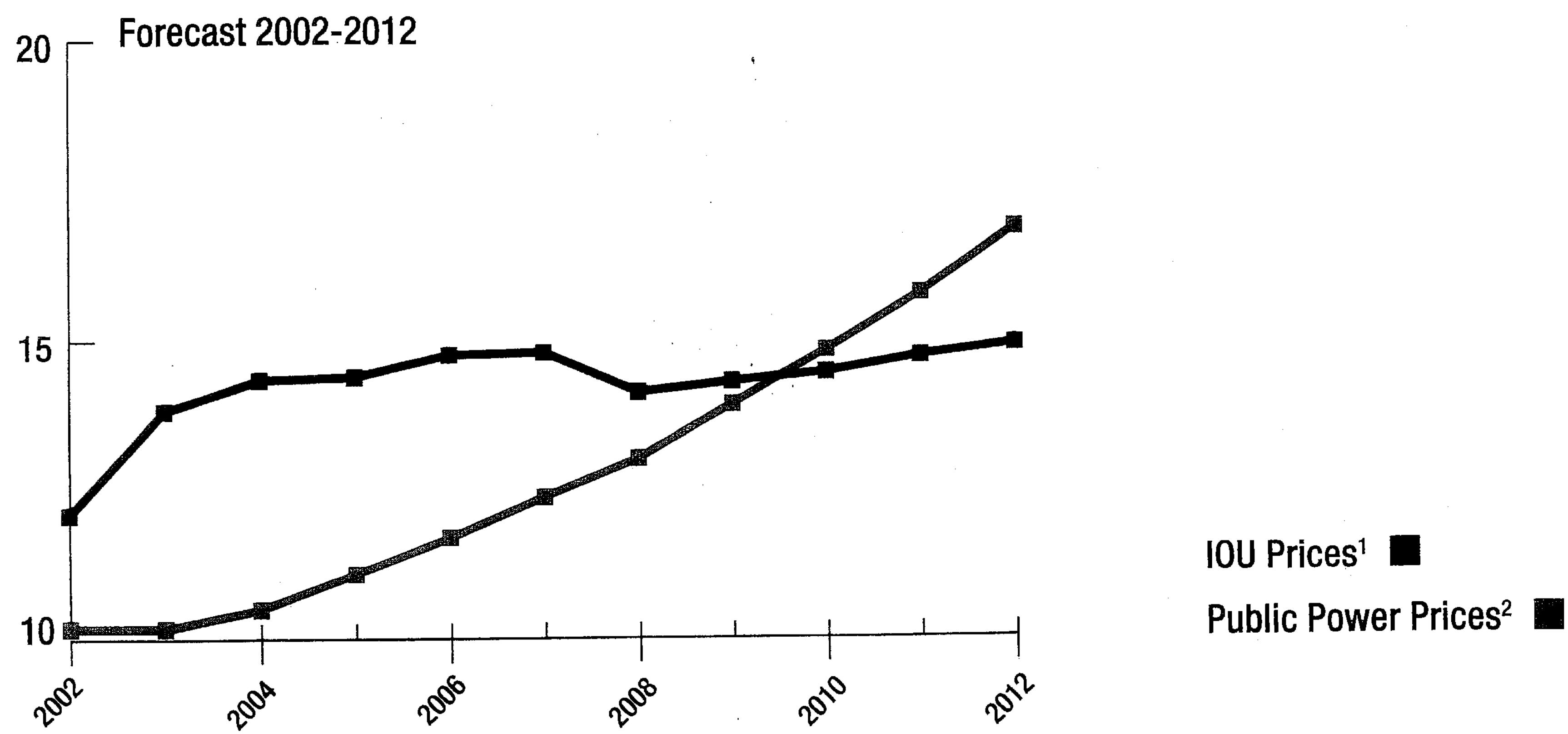
Utility Rate Comparison By State, 2000 (cents per kilowatt-hour)



Source: American Public Power Association, *2002 Annual Directory & Statistical Report*

The California Energy Commission Predicts Public Power Prices Will Surpass Investor-Owned Utility Prices by 2010.

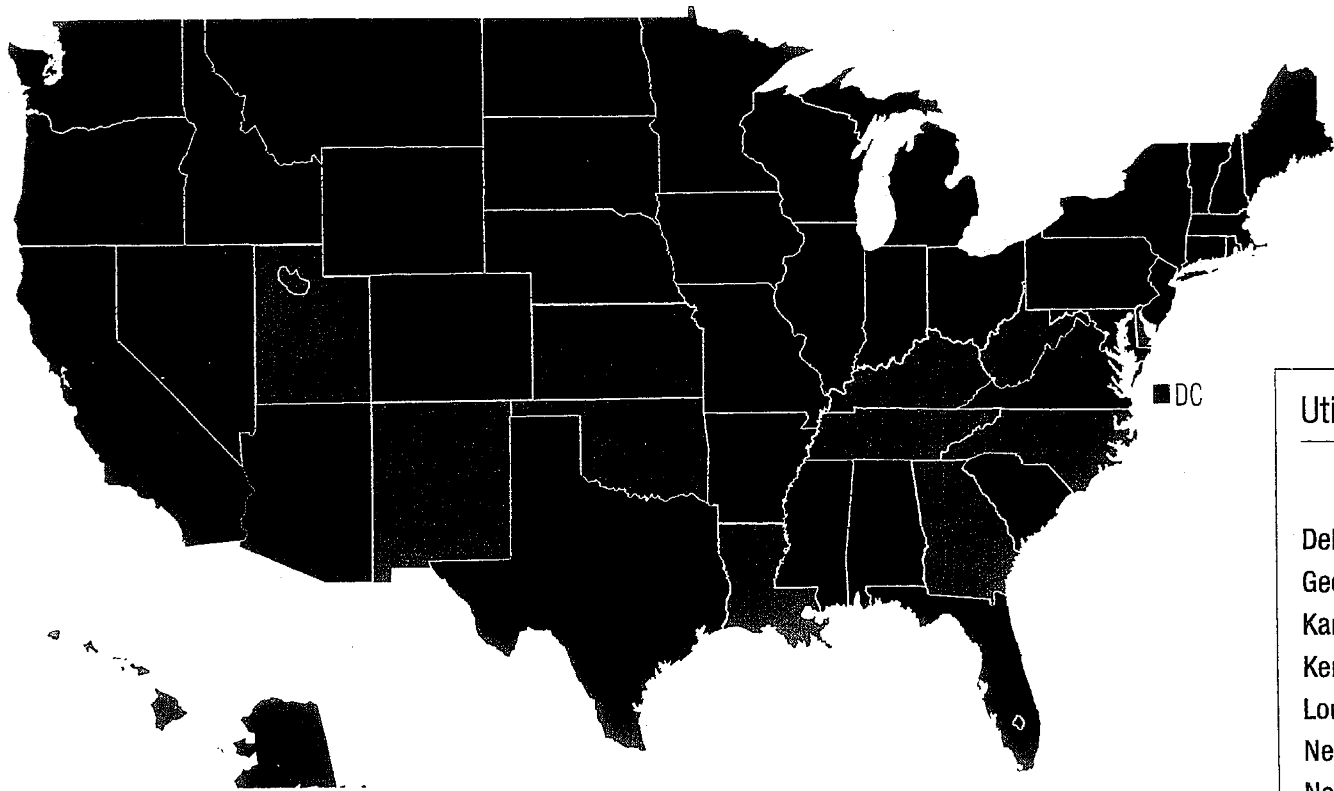
Weighted Average Residential Retail Electricity Prices (cents per kilowatt-hour)



[1] IOUs include Pacific Gas & Electric, Southern California Edison, San Diego Gas & Electric.
[2] Public power utilities include SMUD, Los Angeles Department of Water & Power, Burbank, Glendale, Pasadena.

Source: California Energy Commission, 2002

In 11 states, public power residential rates are the same or HIGHER than those of investor-owned utilities.

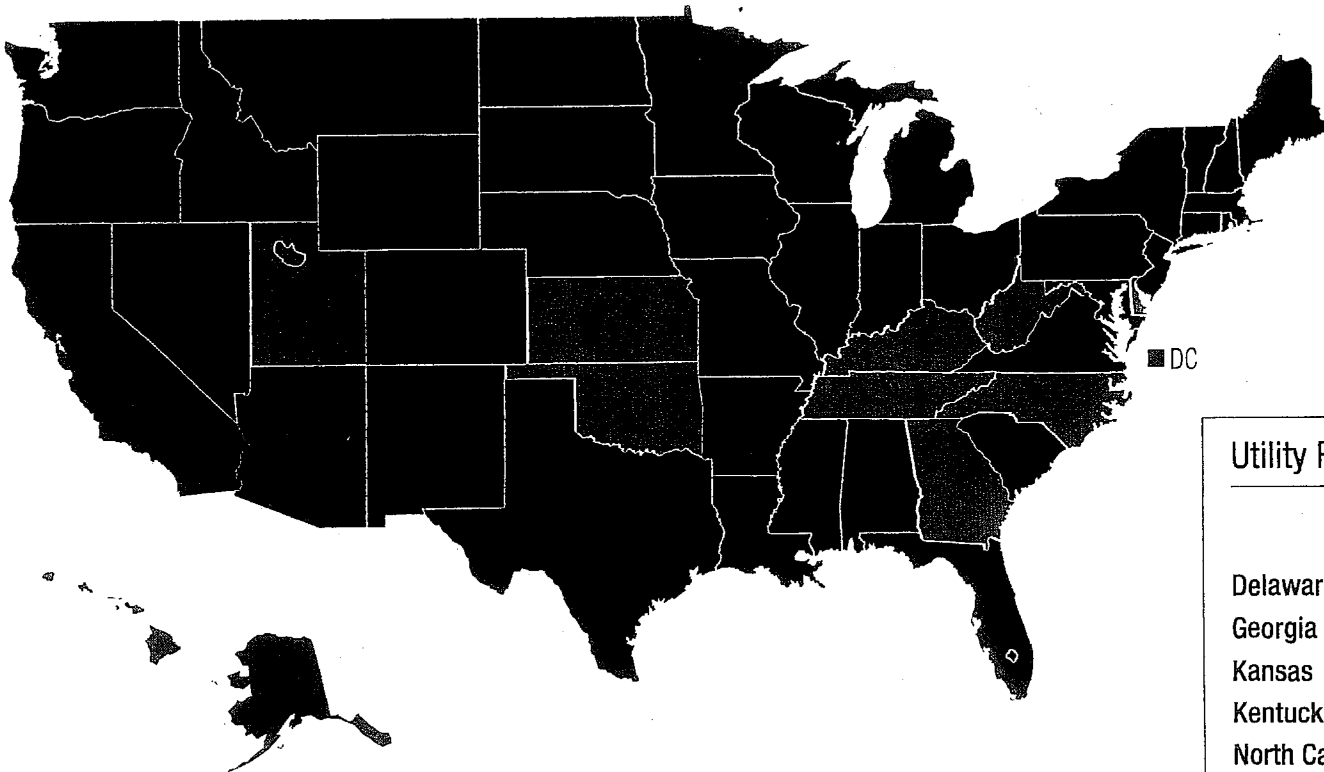


Utility Rates (cents per kilowatt-hour)

	Public	IOU
Delaware	9.1	8.4
Georgia	7.4	7.3
Kansas	7.7	7.3
Kentucky	5.7	4.9
Louisiana	7.9	7.9
New Mexico	8.1	8.1
North Carolina	8.9	7.6
Oklahoma	7.0	6.9
Tennessee	6.3	4.9
Utah	6.7	6.2
West Virginia	6.7	6.2

Source: American Public Power Association, *2002 Annual Directory & Statistical Report*

In 9 states, public power residential rates are HIGHER than those of investor-owned utilities.



Utility Rates (cents per kilowatt-hour)

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Kentucky	5.7	4.9
North Carolina	8.9	7.6
Oklahoma	7.0	6.9
Tennessee	6.3	4.9
Utah	6.7	6.2
West Virginia	6.7	6.2

Source: American Public Power Association, *2002 Annual Directory & Statistical Report*

Government-Owned Power

A List of Online Resources

In today's digital age, Web sites are a vital communications vehicle. According to a recent "Media in Cyberspace" survey conducted in conjunction with Columbia's School of Journalism, reporters are increasingly dependent on Web sites as a primary source of information. So, if your company is defending itself against a government takeover, it's critical that you give your Web site the attention it deserves—remember to keep information updated and relevant to your campaign. It's also important to know what other information is available to the public through the Internet.

What's Already Out There?

Following is a partial list of Web sites* that provide information about public power and government-owned utilities.

- **American Local Power Project: www.local.org**
  The site supports local public power and municipalization efforts. There are links, reports, and news on municipalization, with an emphasis on California.

- **American Public Power Association (APPA): www.appanet.org**
  Primary trade association for the government-owned electricity industry. Strongly supportive of current government-owned utilities and new government takeover efforts. Resources include:
  - **www.appanet.org/about/why/answers/straightanswerstoc.cfm**
    APPA fact sheet on the advantages of public power.
  - **www.appanet.org/about/statistics/ppcostsless2000.pdf**
    APPA fact sheet detailing the cost advantages of public power.
  - **www.appanet.org/Links/index.cfm**
    Listings of government-owned power projects around the country, by state.

- **Association of Washington Cities: www.awcnet.org**
  Founded in 1933, the Association of Washington Cities (AWC) is a non-profit, non-partisan organization that represents Washington's cities and towns before the state legislature, the state executive branch, and with regulatory agencies. The AWC provides technical assistance on energy issues.

- **The Bay Area Economic Forum: www.bayeconfor.org**
  San Francisco-based group that has conducted research on the economic impacts of new public power. Resources include:
  - **www.bayeconfor.org/pdf/ElectricMuni.pdf**
    Economic analysis of government takeover efforts in San Francisco.

*Web site URLs correct as of August 26, 2002.

- **California Taxpayers Association: www.caltax.org**
  California taxpayer advocacy organization. The site contains research and opinion pieces on energy policy and restructuring, including government takeovers and public power. Resources include:

  - **www.caltax.org/energy.htm**
    Research, stories, and opinion pieces on government energy policy.

  - **www.caltax.org/municipalization.htm**
    Articles and information on public power.

- **Dam Cheap Power: www.damcheappower.com**
  A site created by supporters of the effort in Montana to "buy back the dams"—Montanans for a Secure Energy Future. Resources include fact sheets, frequently asked questions about I-145 (the state ballot initiative), and a news archive.

- **Federal Power Marketing Administrations (PMAs):**
  The role of power marketing administrations is to market and transmit electricity from federally owned hydropower projects. Government-owned utilities are eligible for preferential access to below-market cost power from the PMAs.

  - **Bonneville Power Administration (BPA): www.bpa.gov**
  - **Southeastern Power Administration (SEPA): http://sepa.fed.us**
  - **Southwestern Power Administration (SWPA): www.swpa.gov**
  - **Western Area Power Administration (WAPA): www.wapa.gov**

- **Governing: www.governing.com**
  Governing is a monthly magazine whose primary audience is state and local government officials: governors, legislators, mayors, city managers, council members, and other elected, appointed, and career officials. *Governing* is published by Congressional Quarterly, Inc.

- **Large Public Power Council: www.lppc.org**
  LPPC is an organization comprised of 24 of the nation's largest locally owned and controlled power systems. Resources include a history of public power, a list of public power benefits, issue analyses, and a public power glossary.

- **League of California Cities: www.cacities.org**
  An association of California city officials, this organization does not advocate government takeovers directly, but does offer some brief information on how to form a government-owned utility.

- **New Rules.Org: www.newrules.org/electricity**
  A site with an anti-globalization focus, this organization promotes local control of the power system. The site contains reports on public power, cooperative energy ownership, and green power. Resources include:

  - **www.newrules.org/electricity/stl.html**
    Link to the book *Seeing the Light*, which urges local control of the electricity system.

- **Power to the People: www.powertothepeople.org**
  Pro-public power takeover site, with a California emphasis. This site bills itself as a discussion forum of public power and public power takeover initiatives.

- **Public Power Now iMagazine: www.publicpowernow.org**
  Pro-public power news site with an environmental slant. Includes reports, advocacy, and links to public power organizations and advocacy materials.

- **Public Utilities Reports (PUR): www.pur.com/**
  An online resource for public utility information covering local, state, and national energy and power markets, deregulation and restructuring trends, energy prices, and electric and gas utility rates.

- **Reason Public Policy Institute (RPPI): www.rppi.org**
  The Reason Public Policy Institute (RPPI) is a public policy think tank promoting choice, competition, and a dynamic market economy. This site contains research and reports on the California energy crisis and electricity issues, including information on government-owned utilities. Resources include:

  - **www.rppi.org/electele.html**
    Links to RPPI studies and publications on the electric industry, including municipalization and public power.

  - **www.rppi.org/electricity**
    RPPI California energy crisis information page.

- **The Utility Connection: www.utilityconnection.com**
  The Utility Connection provides links to 4,032 electric, gas, water, and wastewater utilities, utility associations, utility organizations, and related state and federal regulatory Web sites.

State Resources

Links to individual state municipal electric authorities/associations may be accessed through:
www.publicpower.com/powerlinks/municipal_utilities.html

- Alabama Municipal Electric Authority
- California Municipal Utilities Association
  - Los Angeles Department of Water & Power
  - Sacramento Municipal Utility District
- Colorado Association of Municipal Utilities
- ElectriCities of North Carolina
- Florida Municipal Electric Association
- Florida Municipal Power Agency
- Iowa Association of Municipal Utilities
- Kansas Municipal Utilities
- Louisiana Energy & Power Authority
- Michigan Public Power Agency
- Missouri Association of Municipal Utilities
- Minnesota Municipal Utilities Association
- Municipal Electric Power Association of Kentucky
- Municipal Electric Systems of Oklahoma
- Municipal Electric Utilities of Wisconsin
- Nebraska Public Power District
- New York Power Authority
- Oklahoma Municipal Power Authority
- Oregon People's Utility District Association
- Salt River Project (AZ)
- Tennessee Valley Public Power Association
- Tennessee Valley Authority
- Texas Public Power Association
- Utah Municipal Power Agency
- Washington Public Utility Districts Association
- Wyoming Municipal Power Agency

September 2002

EDISON ELECTRIC INSTITUTE

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
202-508-5000
www.eei.org

LIPA Assessment:

Municipalization Advocates Point to the Long Island Power Authority as an Example of a Successful Municipal System.

A Closer Look Reveals that LIPA is a Unique Case.

LIPA: A Unique Municipalization

- The Long Island Power Authority (LIPA) is being used as an example of a successful municipalization that could be replicated in other areas of the country
- A closer look, however, reveals that LIPA is a unique case that is not representative of other municipalization efforts
  - Several factors contributed to LIPA's uniqueness
  - LIPA doesn't show municipal-type rate advantages
  - LIPA outsources all of its operations

Several Factors Contributed to LIPA's Uniqueness

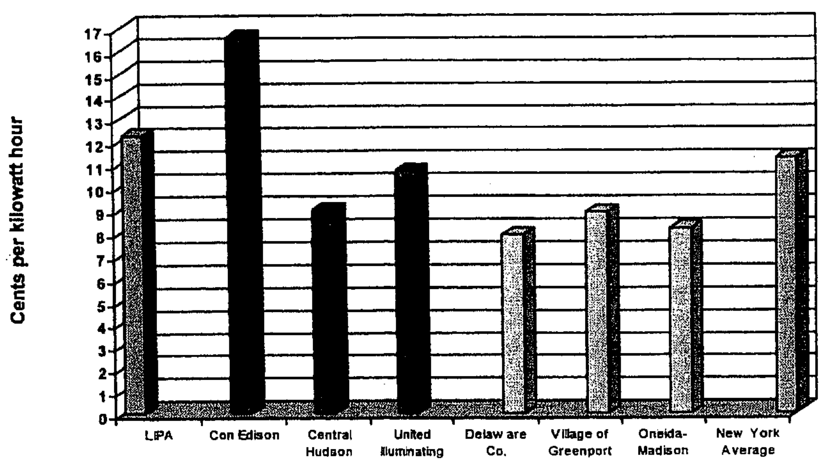
- **Geography**
  - LIPA is an island utility relatively disconnected from the grid
  - All assets were held together as one service territory – no subdivisions
- **LILCO Bankruptcy**
  - Special situation (including Shoreham resource liability) hastened municipalization
- **Formation Process**
  - Streamlined and expedited by New York state government to end LILCO debacle
  - Pre-existing (1986) state-created holding company structure for assets
- **Financing and Savings Sources** [1]
  - Low-cost financing offered immediate ratepayer savings
  - $226 million: Shoreham savings
  - $108 million: Lower cost of capital
  - $118 million: Federal income tax avoidance
  - Shoreham property tax issue settled
- **Asset Transfer Process**
  - Expedited
  - Some traditional municipalization hurdles (e.g., just compensation, stranded costs, and trials and appeals) avoided

(1) LIPA website: www.LIPA.org

LIPA's Formation Process Was Not Standard

Requirements	LIPA	Standard Municipalization
Create Enabling Legislation	(Pre-Existing)	Yes
Local Referendum to Create Municipal Utility	No	Yes
Condemnation Process	No	Yes
Valuation Reconciliation	No	Yes
Power Supply Acquisition	No	Yes
Operations Creation	No	Yes
Financing	Yes	Yes
Stranded Costs	No	Yes
Corporate Municipal Instrumentality of the State of N.Y.	Yes	No
Plant & System Management by Outsourced Profit Entity	Yes	No

Comparison of LIPA to Selected Regional Average Electric Rates for 2000



Source: Dept. of Energy, Energy Information Administration, Total System Rate

FOR IMMEDIATE RELEASE
December 15, 1997

Electric System Municipalization Neither Possible Nor Practical On LI

Could Raise Rather Than Lower Electric Rates

Uniondale, NY – December 15, 1997 – In a letter sent to village officials Islandwide regarding the municipalization of LILCO's transmission and distribution system by local governments, Long Island Power Authority Chairman, Richard Kessel warned that "not only is it legally barred - it will cost your taxpayers millions of dollars in legal and consulting costs without any certainty that rates will decline. In fact, they may go up."

The letter was sent in response to questions raised by some Nassau and Suffolk village officials regarding claims that the municipalization of electric systems on Long Island would lower electric rates by as much as 50 percent.

"Promises of 40 or 50 percent rate reductions are preposterous," said Mr. Kessel in his letter. "Most municipalities have little to gain and potentially much to lose by taking over the electric system in their communities.

"The only viable, workable plan that will significantly lower electric rates on Long Island is Governor Pataki's plan, which will reduce electric rates an average of 17 percent Islandwide," said Mr. Kessel. "Everything else is conjecture and guesswork."

Mr. Kessel explained that municipalization is not possible in Nassau and Suffolk any longer because the "LIPA statute preempts any Long Island municipality from condemning any portion of the electric system in its town." He also explained that revisions in New York State's condemnation law requires a municipality to take title to the electric system it seeks to acquire before knowing the price it would have to pay for the system. "That's like signing a blank check to LILCO," wrote Mr. Kessel.

According to Mr. Kessel, the Federal Energy Regulatory Commission (FERC) is another obstacle to realizing rate cuts as a result of municipalization. Because FERC is

"compelling newly formed municipal electric utilities leaving a private utility to pay their share of the local private utility's stranded costs," he said.

LI's Municipal Systems Formed at Turn of Century

Municipalization advocates usually point to Rockville Center, Freeport and Greenport as examples of successful municipal systems. In his letter, Mr. Kessel underscored that "all three Long Island municipal electric utilities trace their origins to the turn of the century" long before LILCO was created.

In addition to owning their own distribution systems, the three municipal electric utilities also purchase "very inexpensive Niagara preference hydro power from the New York Power Authority (NYPA) to meet nearly all of their power needs," said Mr. Kessel.

NYPA power "is a major reason the three municipal electric utilities have such low rates," Mr. Kessel stressed. "Any new municipal electric utility would be unable to purchase such inexpensive NYPA hydro power until after at least the year 2013, since such hydro power is fully committed under contracts until then," he wrote. Kessel also advised that, after the year 2013, it would be highly unlikely that new municipal systems would receive any of the low cost hydro power "due to the dependence of current municipal systems on the existing supply."

'86 Tax Reform Act Changed Municipalization Rules

In his letter, Mr. Kessel also reported that the upstate community of Massena, which is also used as a model by municipalization advocates, completed its municipalization in 1980, long before tax law changes mandated by the federal Tax Reform Act of 1986. He explained that example, Massena was able to use tax-exempt bonds to acquire a portion of Niagara Mohawk's transmission and distribution system, which helped lower electric rate costs under its municipalization process. However, new tax laws prohibit this except for LIPA.

"LIPA is able to use tax-exempt debt to purchase LILCO," wrote Mr. Kessel. "Any municipalization (anywhere in the country) that occurs after October 1987 will have to be done with higher cost, taxable bonds."

Mr. Kessel warned that municipalization advocates usually make rate reduction projections and presentations that are misleading. The result, he said, could lead unsuspecting and uninformed municipalities "down a road that will wind up actually raising your electric rates instead of lowering them."

Source: Long Island Power Authority Web site, www.lipower.org

EDISON ELECTRIC INSTITUTE

Electric Utility Municipalization Issues Focus Groups

Conducted by:
Market Strategies

Prepared for:
Edison Electric Institute

Portland, Oregon
May, 2002

Edison Electric Institute (EEI) is the association of United States shareholder-owned electric companies, international affiliates and industry associates worldwide. In 2000, our U.S. members served more than 90 percent of the ultimate customers in the shareholder-owned segment of the industry, and nearly 70 percent of all electric utility ultimate customers in the nation. They generated almost 70 percent of the electricity generated by U.S. electric companies.

Organized in 1933, EEI works closely with its members, representing their interests and advocating equitable policies in legislative and regulatory arenas. In its leadership role, the Institute provides authoritative analysis and critical industry data to its members, Congress, government agencies, the financial community and other influential audiences. EEI provides forums for member company representatives to discuss issues and strategies to advance the industry and to ensure a competitive position in a changing marketplace.

EEI's mission is to ensure members' success in a new competitive environment by:

- Advocating Public Policy
- Expanding Market Opportunities
- Providing Strategic Business Information

For more information on EEI programs and activities, products and services, or membership, visit our Web site at www.eei.org.

FINDINGS MEMO

Introduction:

Edison Electric Institute commissioned Market Strategies to conduct two focus groups in Portland, OR to discuss the issue of municipalization of electric utilities.

One group was comprised of lower socio-economic respondents and the second group was comprised of high socio-economic respondents. The respondents had to be at least partially responsible for their electricity bill.

The focus group was comprised of several topics, including:

- A general discussion related to the issue of electric utility deregulation and other recent topics related to electricity service;
- Discussion about the topic of municipalization, including probable benefits and risks and probable outcomes of municipalization;
- Evaluation of specific messages supporting and opposing electric utility municipalization.

Factors such as the small sampling of respondents associated with focus groups and the specific context of the location selected mean that this research is qualitative in nature and as a result, conclusions drawn within this report should be treated in that context – to provide a sense of direction, not the definitive word.

The Context of Discussion:

In any focus group, there are contextual factors that underlie the discussion. These factors in Portland include:

- Many respondents note the virtue of the local climate and natural beauty as the key benefit to living in Portland. Respect for the natural beauty of the Oregon landscape appeared to be a strong value held by respondents in both groups, and was a major reason people have chosen to move, remain, or return to Portland.
- The local electric utility, Portland General Electric, is owned by Enron. This is well-understood by all respondents, and played a role in how people viewed the motivations and effects of municipalization of their utility.
- There was a general sense of malaise about the effectiveness and efficiency of their local government. While attitudes of government inefficiency often underlie these sorts of discussion, Portlanders seemed particularly agitated by their local government. Additionally, the Portland area is comprised of several cities, which result in two overlapping levels of local government (a regional government as well as local town councils). This adds to the confusion about which government would handle electric service, and their general criticisms of municipal government.

- Portlanders are generally satisfied with their electric service. The result is a generally low level of demand for change to the electric utility side of the business. It is likely that a different electric service territory with a greater history of reliability and service challenges would probably react much differently to this issue.

General Electricity Issues:

- Most respondents are satisfied with the local electric service. Because they had generally experienced reliable service, they were almost confused by questions about their satisfaction with the electricity service. Their response echoed the sentiment that there is nothing to be dissatisfied about, they turn the lights on and they work.

- Both groups recognized that electricity rates had increased over the past year, the emphasis on rate increases was more acute among lower socio-economic respondents. Despite concerns about recent increases in electric rates, few were dissatisfied with the service. A few lower income respondents who live in rural areas expressed some dissatisfaction with reliability, particularly the time it takes to restore service in remote rural areas, however, these respondents were the exception.

- There is a generally low awareness of any activity in the local electricity market:
    - All respondents seem familiar that their electric utility is PGE and were already aware that Enron owns the local utility. They also understood that this meant their electric utility is investor-owned.
        - As a result of the current ownership structure and the fact that PGE used to be locally controlled, respondents were able to compare and contrast a locally controlled investor-owned utility and an electric utility that is headquartered elsewhere (such as Houston, TX). The former structure is viewed as preferable to the current structure due to local responsiveness and community presence. This, of course, had an impact on their perceptions of municipalization, since municipalization would result in a return to local control.
        - In addition, respondents' low regard for Enron was a factor separate and distinct from the size and remoteness of Enron to Portland. To quote one respondent:

          "Enron is just a large bad company as opposed to a large indifferent company"

          This presented a dynamic of its own which certainly influenced the tone of the discussion.
    - Respondents are also familiar with the California energy situation of last year, however, many respondents, particularly the lower socio-economic respondents were relatively unfamiliar as to how the crisis occurred. However, among higher socio-economic respondents awareness of the details was quite high:
        - Respondents in both groups asserted that Enron manufactured the California electricity crisis.

- High socio-economic respondents did not blame either deregulation or the marketplace for the California crisis, but agreed that the situation was the result of a number of failures on both sides. In particular, one respondent noted that the system failed by not having adequate safeguards to prevent manipulation of the electricity prices (a failure of deregulation to provide adequate controls on the marketplace).
- Higher socio-economic respondents understood many of the elements leading to the California crisis, including:
  - lack of new infrastructure due to cumbersome approval. One respondent noted that this became increasingly problematic because it is not possible to store electricity, therefore neglect resulted in an inability to deal with the peak demand periods,
  - competitive wholesale markets with fixed retail markets – called "half-deregulation" by one respondent,
  - the requirement that utilities purchase electricity on the spot market,
  - manipulation of the marketplace by generators.
- One respondent incorrectly stated that the California utilities voluntarily divested their generation for financial gain, rather than as a result of regulatory requirements.

- Respondents were of the impression that they were no longer purchasing "locally generated" electricity as a result of competition in California. They viewed this as a negative outcome for the local market.
- Respondents in the higher socio-economic group were aware of recent electricity shortages that resulted from droughts.
- Higher socio-economic respondents were aware of a deal last year by Enron to sell PGE to the local gas utility. Respondents were concerned about the prospect of a monopoly in the area with one company owning both the electricity and gas service for the area.
- On the issue of deregulation, one high socio-economic respondent noted that California is one extremely negative situation, but that Pennsylvania was an extremely positive outcome. Therefore, as we consider deregulation, we ought to examine the Pennsylvania example to determine what lessons could be learned.

Attitudes Towards Municipalization:

"They had a hell of a time with the water department,
what would they do with electricity"

Most respondents in Portland had never considered municipalization of their electric utility prior to attending the group. However, three or four of the higher socio-economic respondents recall having heard something about municipalization of PGE in the late 90's, but the idea failed. Clearly, it is not a serious top-of-mind issue, since it does not remedy a situation which they felt deserves immediate attention. As a result, respondents tended to change their minds frequently, and were persuaded by arguments on both sides of the issue.

Asked to list the advantages of municipalization prior to any discussion of the topic, respondents noted:

- Increased local accountability and decision-making, (including a local place where people could express their displeasure);
- Increased public involvement and education on issues affecting electric service,
- Increased "corporate" involvement in the local community;
- Increased local employment, particularly in head offices;
- Costs would be more stable. Lower electricity rates – possibly as a result of the removal of the need to pay shareholders;
- The possibility that the electric utility would be able to generate electricity from local sources, such as wind;
- Potential for rate caps.

The most significant advantages noted related to local control and accountability. Many respondents noted that they felt that these utilities were more responsive and accountable to the community rather than to shareholders, particularly given their differing priorities. In addition, the feeling that people would want to have increased local control may be the result of the fact that people do not understand their local electric service – local control would therefore empower and educate them –and for some, the significant increase in electricity prices was inexplicable to them. Some respondents in the low socio-economic group believed that the profit motive resulted in the sale of cheap local electricity to other utilities while purchasing more expensive electricity to supply their customers. As a result, they felt that the change in ownership would make people more informed and involved and result in less expensive service than would be received by an investor owned utility.

In terms of disadvantages, respondents clearly had administrative concerns. Specifically, they noted:

- The potential for confusion, particularly if it is done piecemeal by the various city governments in Portland;
- Bureaucracy, red-tape;
- Comparison to other local services including education, garbage collection and water service. One respondent noted that the local water authority takes up to two years to get water bills to some customers. Some respondents viewed the

education system as over-run by bureaucracy. The garbage collection is a franchise, owned by the city and contracted-out to private companies – thereby ensuring a more efficient system. At least one respondent perceived the municipal water authority to be poorly run;

- Uncertainty regarding the source of money to make such a substantial purchase, and the potential capital costs, and the potential for increased taxes;
- Inexperience of local government in operating an electric utility. Some perceived some start-up confusion as the new management adapts and learns on the job;
- The lack of any ability to assure that electricity rates would decline as a result of the municipalization, and the possibility that electric wholesale charges will increase because the city would not be a major "bulk-purchaser" of electricity;
- The fact that the local residents will assume all business risks associated with running an electric utility. However, one respondent noted that governments already bail-out utilities – the municipality will not let the utilities fail (there was a specific example of this in Oregon in the past) – so residents are already assuming all the business risk;
- The potential for increased conflict with generators after having appropriated their assets;
- The possibility that municipalization could make electricity choice more difficult in the future;
- The potential for environmental issues that the city will have to face. The potential for municipalities to cave-in to NIMBY issues at the expense of reliability would increase under municipalization.

The most significant disadvantage cited by respondents appeared to be the concerns about the ability of local government to finance the acquisition (particularly unexpected acquisition costs) and the potential for mismanagement and red tape. Some respondents were concerned that a municipally-owned electric utility would not be able to attract the same level of management talent as an investor-owned utility.

One concern raised at the end of the higher socio-economic group was about what would happen to people who were served by PGE but were not within the city limits. The respondent was concerned that she would be served by a municipally-owned utility without having the ability to have a say (i.e. a vote), because she is unable to vote for the mayor of Portland.

Despite the positives and negatives, some respondents' greatest reservation about municipalization was that they were uncertain that there would be any benefit given that the electric utility does not generate its own electricity. This is not a disadvantage, it is merely a reason for inertia – if it ain't broke, don't fix it.

Statements In Favor of Municipalization:

Respondents were asked to evaluate four statements in favor of municipalization and rank them from the most persuasive to the least persuasive statement in favor of municipalization. The chart below indicates the number of respondents who ranked the statements as most persuasive to least persuasive, followed by the average (mean) ranking of the groups (lower mean scores indicate that a statement is more persuasive) :

	MOST PERSUASIVE			LEAST PERSUASIVE	
STATEMENT	FIRST	SECOND	THIRD	FOURTH	MEAN
Municipal electric systems are eligible for special advantages, like tax-free bonds and low-cost power from federal hydropower projects. These advantages allow a municipal electric system to offer lower electricity rates.	6	10	5	0	1.95
Because of its local focus, a municipal electric system offers more accountability to customers than a distant shareholder-owned electric company. More accountability means better service, high reliability, and low rates.	10	3	5	3	2.05
A municipal electric system will be run for the benefit of the citizens, not distant investors in a huge corporation, so there is less chance of steep price increases or inflated rates.	3	8	8	2	2.43
Given the mixed results of electricity restructuring in a number of states, a municipal utility is an insurance policy to counter the possible downside effects of electricity restructuring.	2	0	3	16	3.57

Although the rankings and averages are not statistically representative because of the small sample and the nature of the sample selection (focus group respondents), the purpose of the rankings is to provide a general sense of the overall ranking of the statements.

LOCAL FOCUS, MORE ACCOUNTABILITY, BETTER SERVICE, HIGH RELIABILITY, LOWER RATES.

Although this statement had the second highest average score, more people rated this as most persuasive than any other statement. (Five in each group)

Local control and accountability made sense with their emotional appeal. This issue was raised strongly in the earlier part of the discussion as a reason for municipalization, so it resonated with their own thinking.

In the higher socio-economic group, one respondent noted that municipalization would turn bad electric service into an election issue, which should pressure for improved service. However, it is important to remember that people here already found their electric service to be good, so in this case it is likely that the deterioration of electric service would be the election issue.

In the lower socio-economic group, several respondents who did not rank this statement highly noted that they were already getting excellent service from PGE, so they could not see a municipal utility giving them "better" service.

However, a few respondents in the lower socio-economic group noted that they would define service as including the power generation.

> One female respondent in the lower socio-economic group stated, "We have sold a lot of our power away. And I consider that a part of service, with power that's generated elsewhere, I don't see that as responsible or beneficial to me. So I would look at service as more than what's coming into my home."
>
> A male respondent in the lower socio-economic group echoed that comment but phrased it more in the context of accountability: "It's going to affect accountability. They definitely aren't going to sell cheap power to somebody else and then sell higher priced power to local ratepayers."

Would it have made a difference if Enron didn't own PGE? One respondent in the higher socio-economic group noted that Enron made no difference because any corporate ownership could be compared to local control and more local influence. However, another respondent noted that she did not believe municipalization would even be on the table had it not been for the Enron situation. Respondents in the low socio-economic group reflected the latter argument.

SPECIAL ADVANTAGES, TAX-FREE BONDS, LOW COST POWER, LOWER RATES.

This statement was the second most popular in terms of the number of people who ranked it number one, but most persuasive on average.

Some respondents noted that this statement contains a concrete measure to contain costs – tax-free bonds. This opportunity to save money was seen to reflect one of the main reasons they would have to municipalize in the first place, lower costs.

Others noted that hydro power could be cheaper than existing sources. In particular, there are perceived advantages to the hydro power by virtue of the fact that the electricity is locally generated, and less expensive. Certainly this argument addressed the earlier concern that municipalization would not reduce the cost of the electricity, providing respondents with a sense that a cost savings could be achieved.

The flip side of this argument, however, is that the debt required to acquire the utility could affect other capital projects by the city – this statement is reviewed below in isolation, but was raised as a point of discussion on this statement. While respondents were split on the question of the financial ability of the city to take on the debt, this did not change their perceptions of the benefits of cost savings associated with cheaper hydro.

RUN FOR THE BENEFIT OF CITIZENS, LESS CHANCE OF STEEP PRICE INCREASES.

Despite the fact that the respondents made certain comments along the same lines as this statement – particularly the concerns about the distant huge corporation – in the open-ended benefit discussion, this statement ranked as the third most persuasive statement overall.

Respondents indicated that although this argument was not bad, the top two reasons were accountability and a tangible potential for lower rates spelled out in the earlier two statements. Furthermore, the conclusion that the electricity prices would be less vulnerable to steep price increases was not logical based on the information presented. Because the municipal utility would not generate power, they did not feel that municipalization in itself would reduce the probability of lower rates.

COUNTER THE POSSIBLE DOWNSIDES OF RESTRUCTURING.

This statement was ranked lower across the board. Respondents generally did not feel that municipalization would have any effect given the experience in California, and given the fact that ownership and operation do not necessarily correlate.

One respondent in the lower socio-economic group observed, "There are several municipally owned utilities in California that suffered as bad as some of the others, weren't there?"

Another respondent in the lower socio-economic group noted that restructuring is in the hands of the politicians, therefore, the downside risk remains and the decision is politicized.

Statements Opposed to Municipalization:

Respondents were also provided a second set of statements opposed to municipalization, and asked to rank the statements from most to least persuasive **against** municipalization. The chart below indicates the number of respondents who ranked the statements as most persuasive to least persuasive, followed by the average (mean) ranking of the groups (lower mean scores indicate that a statement is more persuasive):

	MOST PERSUASIVE					LEAST PERSUASIVE		
	First	Second	Third	Fourth	Fifth	Sixth	Seventh	MEAN
There are very large expenses associated with municipalizing the electric system that are hard to predict accurately. The final costs can be so large that they actually require that a city raise electric rates to cover the expense.	5	6	3	1	2	4	0	3.05
Municipalization may require a city to assume large amounts of new debt which can lead to the downgrading of a city's bond rating. This may cause other city activities funded by bonds, like roads and schools, to become more expensive or even impossible.	3	4	2	5	5	0	2	3.62
It is unlikely that a local government will be able to manage an electric system better than a shareholder-owned electric company with more experienced staff. Cities may discover it is a tremendous challenge to run an electric system due to environmental, safety, and reliability issues.	2	3	3	6	4	3	0	3.76
There is no guarantee that municipalization will result in lower electricity prices. The unexpected expenses of municipalization could even mean that rates go up.	1	3	7	3	2	2	3	3.95
Providing electric service is not a proper role for local governments. This service should be left to private businesses, which are more flexible and efficient.	6	1	0	0	4	4	6	4.48
Municipalized electric systems in states that later choose to institute competition or retail choice programs may prevent consumers from enjoying the benefits of a competitive market.	1	2	5	3	1	4	5	4.57

Municipalization usually only involves a takeover of the electricity lines and meters of the electric system, not power plants. City governments will have to buy all of their electricity in a wholesale electricity marketplace subject to frequent price fluctuations.	3	2	1	3	3	4	5	4.57

As noted above, the scores themselves are not statistically valid, however, they are provided to provide a sense of the overall ranking of the statements by the group.

LARGE EXPENSES, HARD TO PREDICT, MAY REQUIRE CITY TO RAISE RATES.

This statement resonates with people's most significant concern about municipalization – the fear that change could actually worsen a pretty good situation. Because people are generally satisfied with electric service, they see no reason to place this at risk for a small potential benefit.

However, some of the respondents felt that by the time the situation moved along, the problems would be ironed-out. However, this was clearly not a sentiment that resonated in the group.

NEW DEBT, DOWNGRADED BOND RATING, MAKE OTHER CITY ACTIVITIES MORE EXPENSIVE.

Respondents understood that this was a risk, however, the positives of cheaper power and tax-free bonds are undeniable outcomes whereas the risk of decreased ability to raise capital in the future was not a certainty.

Some respondents felt that given the city's track record on other issues, it was more likely that the risk that the city would sink itself into debt would outweigh any benefit from tax-free bonds. One respondent noted that bonds are rated on the ability of the taxpayers to repay the bonds. This respondent's assessment of the situation is that Portland is a strong community with the ability to repay. Furthermore, there was a sense that because acquisition costs would be known in advance, the city would be able to assess their ability to handle the financial burden in advance, thereby minimizing the default risk.

However, a parent of several school-age children was affected by this statement. She noted the deterioration of the school system, and she would be concerned that this would further strain the city's ability to fund schools.

ELECTRIC SERVICE IS NOT THE PROPER ROLE OF GOVERNMENT. LEAVE TO PRIVATE BUSINESS, MORE FLEXIBLE AND EFFICIENT.

This statement was the most polarized statement tested. While six respondents placed it as the most persuasive – all of them were from the high socio-economic group – six respondents – all from the low socio-economic group – ranked it as their least persuasive statement. Furthermore, more people placed the statement on the bottom half of the statements than placed it on the top half.

This statement seems to be less persuasive, particularly among the lower socio-economic group, because it is ideological. To find this statement convincing, one would first have to be persuaded that electricity is not a "public good." Failing that, the person would have to be convinced that government is inefficient in providing this public good.

It is difficult to argue that a service such as electricity is not a public good, given the universality of service, and the essential nature of electricity. Government is already involved in this and other public utilities through the PUC. Some respondents noted that the government is needed in this sector to prevent a free-for-all in the electricity marketplace. Compounding this problem is that there are precedents of other municipally-owned utilities, thereby establishing that this is arguably a proper function of government.

> One lower socio-economic respondent said, "For me it was the first sentence… not the proper role of government. It could be. It depends on the area. I don't see that as a convincing argument not to look at the possibility."

Some respondents in the higher socio-economic group noted that the city is responsible for roads, but does not build and maintain the roads. They contract it out to companies who maintain the roads to their standards. As a result, they can conceive of the city being responsible for, but not running an electric utility as a more optimal solution. In essence, contracting-out the maintenance of electric service on a tendered basis.

Finally, respondents were split over whether the government is inefficient in providing this public good. In the lower socio-economic group, one respondent noted, "history has shown that private companies are not more flexible or efficient."

ONLY INVOLVES TAKEOVER OF LINES AND METERS, NOT PLANTS. GOVERNMENTS WILL HAVE TO BUY ELECTRICITY IN WHOLESALE MARKETS WHICH IS SUBJECT TO PRICE FLUCTUATIONS.

People rated this low because they felt these risks could be mitigated through long-term contracts. Besides, municipalization would not change the "risk" of price fluctuation. They did not naturally conclude that governments were inherently less competent at purchasing electricity on the wholesale market than private companies.

For some respondents, this was just of lesser importance than their greater concern, the size of the acquisition of such a large asset. According to one respondent in the lower socio-economic group:

> "I don't think the city of Portland manages their money very well. And we can see that with schools and everything else that's going on, and this was just not as important to me as where the money was going to come from."

UNLIKELY LOCAL GOVERNMENT WILL BE ABLE TO MANAGE SYSTEM BETTER. CITIES MAY DISCOVER IT'S HARD TO RUN SYSTEM DUE TO ENVIRONMENT, SAFETY AND RELIABILITY ISSUES.

It was felt that the ability of local government to manage an electric utility was highly dependent on which municipal government was being discussed. In the abstract, this statement is not persuasive because it was felt that one municipality could operate efficiently whereas another could not. Furthermore, some respondents noted that municipalities often operate utilities, so the assertion that a municipality cannot operate a utility was flawed.

However, if the message is made more specific to a particular jurisdiction, particularly a poorly run municipality, the effectiveness of this argument would likely be stronger. Respondents noted huge disparities in local governments in their own areas, which would greatly affect how they responded to this statement.

Another respondent noted that cities are already burdened with enough responsibilities, without being burdened by one more high priority.

In the lower socio-economic group, one respondent noted that there would be significant changes to the structure, not least of which is the fact that the employees would become government employees. She felt this could affect how the utility is run (either positively or negatively).

NO GUARANTEE OF LOWER RATES, UNEXPECTED COSTS MAY RAISE RATES.

This argument rated fourth overall. The general discussion seemed to indicate that although the statement is true, they were more concerned in the immediate term about the probability that the municipality would mess-up the acquisition – a potentially very large cost.

IN STATES THAT LATER INSTITUTE CHOICE, MAY PREVENT CUSTOMERS FROM GETTING BENEFITS OF COMPETITION.

Because there was no major demand for customer choice, the possibility that choice could be lost did not generate any significant concern. Even in the final argument stage (when respondents were asked to encapsulate the reasons in favor and against municipalization), this argument was not raised anywhere.

Proponents and Opponents of Municipalization:

The discussion had an element of confusion associated with it because respondents were unable to envision who would be the proponents and who the opponents of a municipalization effort. Unable to discern the "white hats" from the "black hats" gave the respondents some trouble in determining who would be best served by municipalization:

- Both Enron and PGE were assumed to be potential supporters and opponents.
  - Some believed Enron supported municipalization because a recent deal to sell PGE to a local gas utility left them without a buyer for an asset they were trying to sell.
  - Furthermore, respondents were confused about the issue of Enron's insolvency. They appeared to think that their financial difficulties meant they are eager to divest <u>any</u> asset. In essence they were assuming all assets are financially burdensome.
- Some believed that PGE and their employees favored municipalization because it would disentangle the company from the problems facing Enron.
- One respondent noted that the city would be interested in purchasing PGE in order to generate a revenue stream to pay for other programs and services such as education. However, there were others who did not believe the mayor would be interested in assuming the responsibility of an electric utility.

Other possible proponents raised included:
- The citizens of Portland;
- Corporate America (corporate consumers of electricity seeking lower costs);
- State commissioners;
- PGE employees;
- Metro or local government officials for the revenue possibilities;
- Progressive politicians (incl. Greens) seeking election.

Possible Opponents include:
- Portland's mayor – the city considered municipalization in the past but rejected it;
- Other potential purchasers of the utility (other IOU's);
- Enron creditors;
- PGE employees, because they don't want to be government employees.
- The state, because this could impose fiscal burden on the state.

One respondent noted that although he did not think the "city" (government) was in favor of municipalization due to the large debt load required to purchase such an asset, that he believed there was a populist element in the city who would support this due to a mistrust of corporations.

Final Reasons for Supporting and Opposing Deregulation:

Having spent nearly two hours discussing the issue of municipalization, respondents were asked again to state the main reasons for supporting or opposing municipalization. They were asked whether they support or oppose municipalization and the most persuasive reasons for and against the idea.

The following chart depicts the main reasons cited at the end of the group – in favor of and against municipalization – along with the reasons cited as their principal reason in favor and against municipalization.

Reasons to Support Municipalization	Reasons to Oppose Municipalization
Local Control ⊇⊇⊄	Uncertainty ⊇
Local Accountability ⊄ ⊄ ←	Acquisition costs ⊇ ←
Lower rates ⊄ ⊄ ⊄	Risk of incompetence ←←←
Build local resources ←←←↑↑	Ret tape and bureaucracy ⊄ ⊄ ↑↑
Cheap Hydro ⊄ ⊄	Inefficiency ⊄ ⊄ ⊄
More jobs/ job security ←↑	No guarantee of lower rates ←←
More adaptive to changes in local circumstances ⊄	Not the role of government (low priority) ⊄ ⊄ ⊄
Knowledge of the local situation ←	Is the city capable of running an electric utility
Fresh thinking ←	Added risk assumed by taxpayers ⊄ ↑
	Added burden on the city
	Past track record of local government
	Still no control over generation ←

← Low Socio-economic respondent in favor of municipalization
↑ Low Socio-economic respondent against municipalization
⊇ High Socio-economic respondent in favor of municipalization
⊄ High Socio-economic respondent against municipalization

In the high socio-economic group, two people ended in favor of municipalization, while nine were opposed. This represented a pretty significant shift from the early part of the group where the respondents were roughly split on the issue.

In the lower socio-economic group, seven respondents were in favor of municipalization while three were opposed at the end of the group. This represented a slight shift in favor, however, the more important observation here is the difference between the high and low socioeconomic groups.

Local accountability, local control and lower rates were seen to be the most compelling reason to support municipalization at the end.

On the issue of local accountability and local control, people were generally not dissatisfied with their service, so they were attempting to ensure that the service would remain good, particularly in the face of a potential PGE sale.

One respondent noted a loss of local control of many things in Portland. Some of the reaction towards municipalization is a call to increase local control.

Asked to explain the change in their attitudes away from municipalization respondents noted their reflections about how poorly past municipal issues had been handled and the absence of a consequential long-term benefit to the idea. In addition, municipalization also risked "ratcheting-up" government involvement. It was felt that the size of the city's commitment necessary to run an electric utility would negate any potential benefit.

In the final analysis, high socio-economic respondents saw no impetus to change the situation, and a great deal of potential risk associated with the municipalization, which would result in their taxpayers/ ratepayers footing the bill. Meanwhile the lower socio-economic groups seemed to see a potential to bring home their electric utility and create a local presence.

Conclusions:

Respondents were generally unaware of the topic of municipalization. Although a few had heard about municipalization in the context of a local proposal that was rejected in 1999, they had given the issue very little thought.

Respondents were generally satisfied with their electricity service, and as such were not clamoring for any changes to how the service is administered.

Topics which activated people to support municipalization, included the concept of localizing the utility – whether in the case of ownership, administration, or power generation. Municipalization was seen to be a mechanism for increasing local accountability and control.

The only other significant reason for supporting municipalization was the possibility of decreased rates. Realizing that the generation assets would not be purchased, somewhat blunted this benefit, however, the possibility of cheaper hydro and tax-free bonds were definitely positive in this regard.

In terms of opposition messages, respondents' greatest concerns surrounded the uncertainty related to the acquisition of such a large-scale asset. Furthermore, they were concerned about the ability of a mediocre local government to manage the system. However, equally compelling at the end of the day is that things are working and that the system should not be placed at risk – if it ain't broke don't fix it.

In the final analysis, municipalization (or more broadly, the ownership structure of electric utilities) is not perceived to be a big issue in the context of other issues in need of attention, at least in Portland. However, respondents noted that once the Pandora's box is opened, it would instantly become an important issue. In other words, proponents of municipalization should be careful what they ask for, because they might get it. And what they will likely get is a referendum on the function of the local municipality.

APPENDIX 1
LISTED INITIAL REASONS TO SUPPORT AND OPPOSE MUNICIPALIZATION

UNAIDED ADVANTAGES OF MUNICIPALIZATION

Increased Accountability (service and rates)
Local control
Local decision-making
Greater commitment to end-users
Increased public involvement
Increased local employment (esp. head office)
Lower electricity rates
More responsive to local community
Cut-out shareholders
Take advantage of local resources
More informed consumers

UNAIDED DISADVANTAGES OF MUNICIPALIZATION

Confusion if it's piecemeal
Bureaucracy
Red-tape
Where's the money going to come from to buy the assets
Inexperience of local government in operating utility
Potential for increased taxes
No choice
Potential for increased conflict with the generators
No "volume discount" in purchasing electricity
Capitalization costs
No guarantees of lower rates
Local government / citizens assume all business risks
Potential environmental issues

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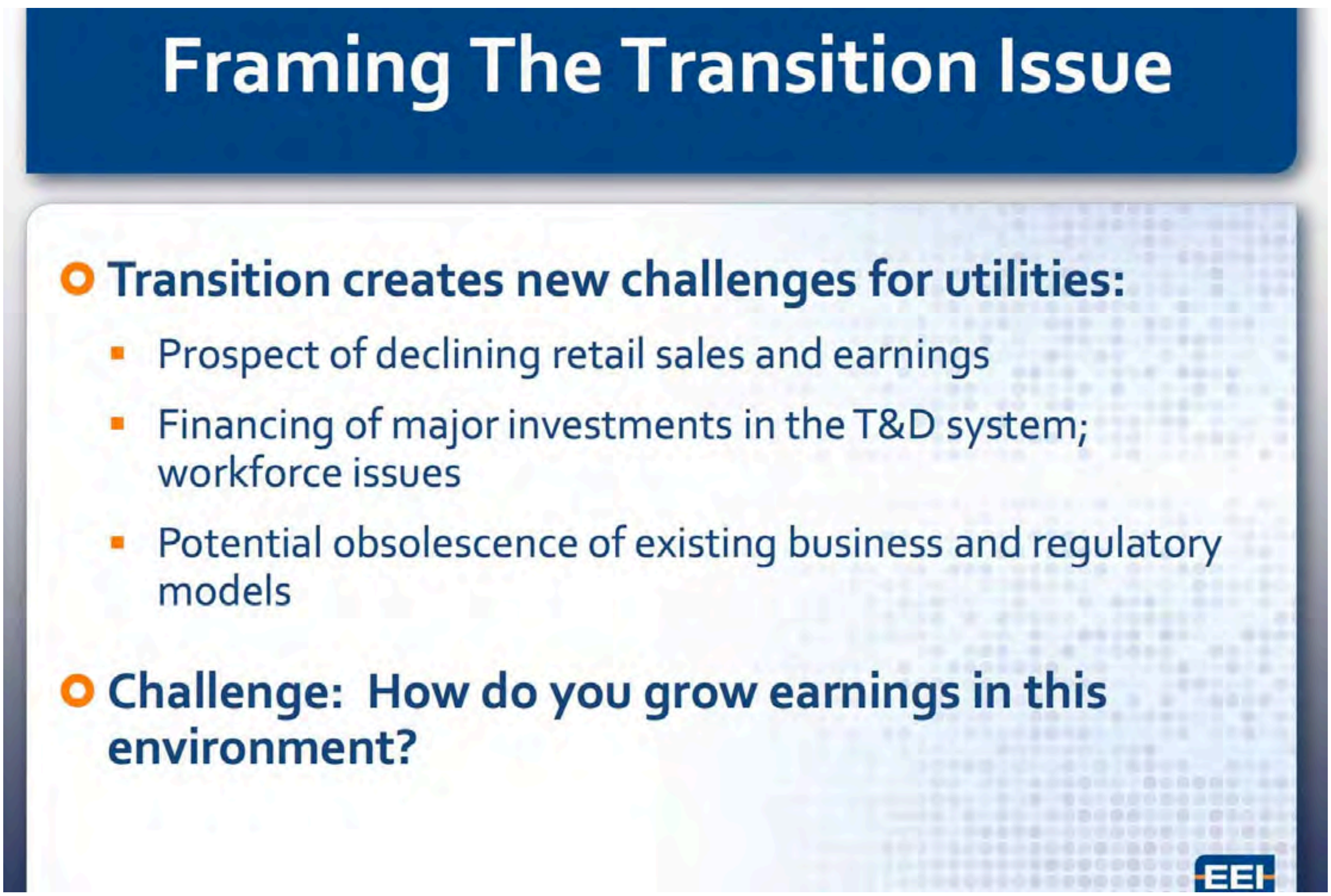
Utilities’ Anti-Solar Campaign and Misinformation Debunked

By Gabe Elsner
March 19, 2015



Utilities' Anti-Solar Campaign and Misinformation Debunked

Utilities' Campaign, Communities of Color, and Conservatives

Old Utility Monopoly vs. 21st Century Utility

Utilities' Anti-Solar Campaign and Misinformation Debunked

Utility trade association Edison Electric Institute (EEI) launched a multi-year anti-solar campaign in 2012 to weaken net metering policies across the country, as reported by *The Washington Post*.

In 2012, during EEI's "Board and Chief Executives Meeting", top utility executives discussed an action plan to confront challenges posed by cheap solar power and to address concerns about profits in the face of new competition, according to documents uncovered by the Energy and Policy Institute. EEI discussed a campaign to target state legislators, regulators, and advocacy groups to slow the growth of distributed solar energy. Two-and-a-half years later, evidence of the action plan can be seen in nearly two dozen states, and a regulatory effort has been partially successful in increasing the cost of solar for homeowners, according to the report in the Washington Post.

Page 59 of 2012 EEI Board and Chief Executives Meeting

Protecting Ratepayers? Nope, Profits.

David Owens, Executive Vice President at Edison Electric Institute, claimed on-the-record with the Post, "It's not about profits; it's about protecting customers." But as documents revealed by the Washington Post story show, these efforts are part of a coordinated campaign to maximize utility profits, not protect ratepayers. Owens' presentation to EEI's Board stated, "How do you grow earnings in this environment?" in reference to the increase in distributed solar.

Utilities make their money by building big, new infrastructure projects and then sending ratepayers the bill. This is exactly why utilities want to eliminate policies that encourage homeowners and businesses to go solar.

Independent studies show that rooftop solar benefits all ratepayers. Recent reports commissioned by regulators in Mississippi, Nevada, and Maine, as well as the state consumer advocate in Vermont, show that distributed solar produces benefits for all ratepayers. By installing solar, homeowners and businesses can help prevent the need to build new, expensive power plants and transmission lines; ease congestion on the grid; and help reduce emissions and pollution. All of these benefits provide savings to ratepayers, whether or not they install solar.

Furthermore, a recent post by the Institute for Energy Economics and Financial Analysis stated:

Rooftop solar provides substantial benefits for everyone, regardless of who installs it. It helps power the homes and shops that adopt it, to be sure, but it has far-reaching benefits for other customers as well…

No less a titan than Sanford C. Bernstein & Co., one of the perennially best-rated firms in Institutional Investor's annual rankings of investment researchers, has studied the issue deeply over the past couple of years and comes away with an unequivocal take on the issue: Rooftop solar, aka photovoltaic solar, means lower peak-hour energy prices for all.

The report from Sanford C. Bernstein & Co. also notes that a four-fold increase of distributed solar on the California grid reduced system loads so much that peak prices were delayed until later in the day, when demand was lower. Lower demand means lower prices for everyone.

Utilities' Campaign, Communities of Color, and Conservatives

The facts haven't stopped the utility industry from using talking points to spread falsehoods about solar's impact on low income communities and electricity rates, even though these talking points are not backed up by credible data. As reported in the Los Angeles Times, and documented by Energy and Policy Institute, the utility trade association, EEI, is spending cash to convince low income and minority organizations to back utilities' assault on solar:

The National Black Caucus of State Legislators and the National Policy Alliance, which represents the Congressional Black Caucus as well as some 10,000 black lawmakers in all levels of government, have backed model legislation imposing surcharges and limiting the appeal of net metering. Their proposals are almost identical to bills favored by big energy companies…

Tax records show [EEI] gave $10,000 to the National Black Caucus of State Legislators in 2013, the most recent year for which records are available. In the two previous years, the institute gave $17,500 to the National Policy Alliance.

We've tracked EEI's contributions to minority groups and in total, the trade association contributed at least $160,000 in 2012 and 2013 (the most recent years available). Three of these groups have passed model legislation that is nearly identical to a model bill passed by the American Legislative Exchange Council (ALEC), which was sponsored by EEI. ALEC is a "corporate bill mill" that produces model legislation and facilitates lobbying of state legislators by special interests like EEI.

While EEI has attempted to influence minority leaders to support the utility industry's efforts, Americans from a diverse range of communities are standing up to support solar. For example, the NAACP recently released a report detailing "the path to transitioning from energy production processes that are harmful to our communities" and a clean energy resolution to "improve the economic wellbeing of low income neighborhoods" through the deployment of clean energy.

And, because utilities are trying to squash free market competition, conservatives are joining the fight to protect solar. The Christian Coalition, a conservative group, recently wrote a blog post saying, "Indiana's utilities are interested in keeping us reliant on traditional fuel sources that hurt our national security and weaken our economy. We must allow homes, businesses, public organizations, and churches to create local, American power by installing solar." Debbie Dooley, a founder member of the national Tea Party, has launched a campaign for a ballot initiative in Florida that would allow citizens to purchase solar directly from private companies (a right that's currently banned in the state).

Old Utility Monopoly vs. 21st Century Utility

The reality is that the utility industry has launched a campaign using politics and backroom deals to try and squash their solar competition and preserve their outdated monopoly business model.

Case in point: EEI's Owens even claimed in the Post that the industry is "pro-solar." Sure, some utilities have taken initiative or responded to forward-thinking public policies (like renewable energy standards, which are also under attack by fossil fuel interests) and integrated solar into the grid. But other utilities have attempted to monopolize ownership of solar systems and prevent third-party competitors from operating in their service territories in Washington, South Carolina, Arizona, New York, and Indiana.

Utilities should be taking leadership to transition towards a clean energy economy, by exploring new business models to integrate more energy efficiency and distributed renewable energy into the grid. As the Ralph Izzo, CEO of New Jersey-utility Public Service Enterprise Group, and Julia Hamm, CEO of the Solar Energy Power Association (SEPA) said in a letter to the Washington Post, “With both energy efficiency and solar, utilities can play a critical role in expanding programs and making them available for all consumers.”

As the price of solar continues to plummet and energy efficiency solutions become more plentiful, utilities will need to innovate, instead of fighting to preserve a 20th-century business model that relies on centralized fossil fuel power plants. Hopefully, utilities will embrace the future instead of fighting to preserve the past — only then can they play a constructive role in providing our nation’s power in the 21st century.

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Utilities wage campaign against rooftop solar

March 7, 2015   More than **10 years ago**

By Joby Warrick

Three years ago, the nation’s top utility executives gathered at a Colorado resort to hear warnings about a grave new threat to operators of America’s electric grid: not superstorms or cyberattacks, but rooftop solar panels.

If demand for residential solar continued to soar, traditional utilities could soon face serious problems, from "declining retail sales" and a "loss of customers" to "potential obsolescence," according to a presentation prepared for the group. "Industry must prepare an action plan to address the challenges," it said.

The warning, delivered to a private meeting of the utility industry’s main trade association, became a call to arms for electricity providers in nearly every corner of the nation. Three years later, the industry and its fossil-fuel supporters are waging a determined campaign to stop a home-solar insurgency that is rattling the boardrooms of the country’s government-regulated electric monopolies.

The campaign’s first phase—an industry push for state laws raising prices for solar customers—failed spectacularly in legislatures around the country, due in part to surprisingly strong support for solar energy from conservatives and evangelicals in traditionally “red states.” But more recently, the battle has shifted to public utility commissions, where industry backers have mounted a more successful push for fee hikes that could put solar panels out of reach for many potential customers.

[Solar energy’s new best friend is . . . the Christian Coalition]

In a closely watched case last month, an Arizona utility voted to impose a monthly surcharge of about $50 for "net metering," a common practice that allows solar customers to earn credit for the surplus electricity they provide to the electric grid. Net metering makes home solar affordable by sharply lowering electric bills to offset the $10,000 to $30,000 cost of rooftop panels.

A Wisconsin utilities commission approved a similar surcharge for solar users last year, and a New Mexico regulator also is considering raising fees. In some states, industry officials have enlisted the help of minority groups in arguing that solar panels hurt the poor by driving up electricity rates for everyone else.

"The utilities are fighting tooth and nail," said Scott Peterson, director of the Checks and Balances Project, a Virginia nonprofit that investigates lobbyists' ties to regulatory agencies. Peterson, who has tracked the industry's two-year legislative fight, said the pivot to public utility commissions moves the battle to friendlier terrain for utilities. The commissions, usually made up of political appointees, "have enormous power, and no one really watches them," Peterson said.

Industry officials say they support their customers' right to generate electricity on their own property, but they say rooftop solar's new popularity is creating a serious cost imbalance. While homeowners with solar panels usually see dramatic reductions in their electric bills, they still rely on the grid for electricity at night and on cloudy days. The utility collects less revenue, even though the infrastructure costs — from expensive power plants to transmission lines and maintenance crews — remain the same.

Ultimately, someone pays those costs, said David K. Owens, an executive vice president for Edison Electric Institute, the trade association that represents the nation's investor-owned utilities.

“It's not about profits; it's about protecting customers,” said Owens, said. “There are unreasonable cost shifts that do occur [with solar]. There is a grid that everyone relies on, and you have to pay for that grid and pay for that infrastructure.”

Whether home-solar systems add significant costs to electric grids is the subject of intense debate. A Louisiana study last month concluded that solar roofs had resulted in cost shifts of more than $2 million that must be borne by Louisiana customers who lack solar panels. That study was immediately disputed by clean energy groups that pointed to extensive ties between the report's authors and the fossil-fuel lobby.

Other studies commissioned by state regulators in Nevada and Mississippi found that any costs are generally outweighed by benefits. For one thing, researchers found, the excess energy generated by solar panels helps reduce the strain on electric grids on summer days when demand soars and utilities are forced to buy additional power at high rates. Other experts note that the shift to solar energy is helping states meet new federal requirements to reduce greenhouse gas emissions while also producing thousands of new jobs. The residential solar industry currently employs about 174,000 people nationwide, or twice as many as the number of coal miners.

"Independent studies show that distributed solar benefits all ratepayers by preventing the need to build new, expensive power plants or transmission lines," said Matthew Kasper, a fellow at the Energy & Policy Institute, a pro-solar think tank. "Utilities make their money by building big, new infrastructure projects and then sending ratepayers the bill, which is exactly why utilities want to eliminate solar."

Solar-panel costs plunge

Residential solar panels have been widely available since the 1970s, but advances in the past decade have transformed home solar energy in many areas from an expensive novelty to a cost-competitive alternative to traditional power.

The average price of photovoltaic cells has plummeted 60 percent since 2010, thanks to lower production costs and more-efficient designs. Solar's share of global energy production is climbing steadily, and a study last week by researchers from Cambridge University concluded that photovoltaics will soon be able to out-compete fossil fuels, even if oil prices drop to as low as $10 a barrel.

In the United States, utilities have embraced solar projects of their own making, building large solar farms that produce nearly 60 percent of the electricity that comes from the sun's rays.

"We are pro-solar," said Edison's Owens. "We are putting in more solar than any other industry."

But the arrival of cheaper solar technology has also brought an unexpected challenge to the industry's bottom line: As millions of residential and business customers opt for solar, revenue for utilities is beginning to decline. Industry-sponsored studies have warned the trend could eventually lead to a radical restructure of energy markets, similar to earlier upheavals with phone-company monopolies.

[Pebble Mine debate: EPA becomes target by planning for rare 'veto']

"One can imagine a day when battery-storage technology or micro turbines could allow customers to be electric grid independent," said a 2013 Edison study. "To put this into perspective, who would have believed 10 years ago that traditional wire line telephone customers could economically 'cut the cord'?"

Support from conservatives

The utility industry's playbook for slowing the growth of residential solar is laid out in a few frames of the computer slide show presented at an Edison-sponsored retreat in September 2012, in a lakeside resort hotel in Colorado Springs, Colo. Despite a bland title—"Facing the Challenges of a Distribution System in Transition"—the Edison document portrays solar systems as a serious, long-term threat to the survival of traditional electricity providers.

Throughout the country, it noted, lawmakers and regulatory agencies were "promoting policies that are accelerating this transition — subsidies are growing." The document, provided to The Washington Post by the Energy & Policy Institute, called for a campaign of "focused outreach" targeting key groups that could influence the debate: state legislatures, regulatory agencies and sympathetic consumer-advocacy groups.

Two-and-a-half years later, evidence of the "action plan" envisioned by Edison officials can be seen in states across the country. Legislation to make net metering illegal or more costly has been introduced in nearly two dozen state houses since 2013. Some of the proposals were virtual copies of model legislation drafted two years ago by the American Legislative Exchange Council, or ALEC, a nonprofit organization with financial ties to billionaire industrialists Charles and David Koch.

Most of the bills that have been considered so far have been either rejected or vetoed, with the most-striking defeats coming in Republican strongholds, such as Indiana and Utah. There, anti-solar legislation came under a surprisingly fierce attack from free-market conservatives and even evangelical groups, many of which have installed solar panels on their churches.

"Conservatives support solar — they support it even more than progressives do," said Bryan Miller, co-chairman of the Alliance for Solar Choice and a vice president of public policy for Sunrun, a California solar provider. "It's about competition in its most basic form. The idea that you should be forced to buy power from a state-sponsored monopoly and not have an option is about the least conservative thing you can imagine."

Where legislatures failed to deliver, power companies have sought help from regulatory agencies, chiefly the public utility commissions that set rates and fees that can be charged by electricity providers. Here, the results have been more encouraging for power companies.

[Report: Effects of climate change 'irreversible']

Last month's decision to slap monthly surcharges on solar customers in south-central Arizona was hailed as a breakthrough for the utilities in a state that has turned back several similar attempts in the past two years. The Tempe, Ariz., Salt River Project, one of Arizona's largest utilities, approved the new fee despite furious opposition from solar users, including about 500 people who packed the commission's hearing room for the Feb. 26 vote.

Solar companies already have filed suit to stop a similar fee increase approved last year by Wisconsin commissioners, and others are watching closely to see if New Mexico's Public Service Co. will adopt a proposal to impose a monthly surcharge of up to $35 on solar customers there.

Regulators in each of the three states have cited fairness as the reason for the proposed increases. But solar advocates say the real injustice is the ability of electric monopolies to destroy a competitor that offers potential benefits both to consumers and to society.

"It's really about utilities' fear that solar customers are taking away demand," said Angela Navarro, an energy expert with the Southern Environmental Law Center. "These customers are installing solar at their own cost and providing a valuable resource: additional electricity for the grid at the times when the utilities need it most. And it's all carbon-free."

Related:

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Disruptive Deceptions: How Electric Utilities Stifled Rooftop Solar

By William Pentland, Former Contributor. ⓘ a clean energy wonk

Published Dec 04, 2015, 12:41pm EST, Updated Jul 28, 2021, 12:09pm EDT

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This article is more than 9 years old.

In January 2013, the Edison Electric Institute, an investor-owned electric utility trade group based in Washington DC, published a report describing the financial risks posed by distributed energy resources for electric utilities and recommending several strategies for managing them.

The report, Disruptive Challenges, served as the opening salvo in what has become a sweeping national campaign to roll back net-metering policies that promote rooftop solar.

“Revising utility tariff structures, particularly in states with potential for high DER adoption, to mitigate (or eliminate) cross subsidies and provide proper customer price signals will support economic implementation of DER while limiting stress on non-DER participants and utility finances,” wrote Peter Kind, a former investment banker who wrote the report for EEI. “This is a near-term, must-consider action by all policy setting industry stakeholders.

The same cannot necessarily be said for other claims made in the report. In particular, the history of utility credit ratings suggests that Kind mischaracterized the risks posed by what he called a "vicious cycle" induced by customer adoption of distributed generation.

"After five decades of decline in industry credit quality . . . [t]he industry cannot afford to endure significant credit quality erosion from current ratings levels without threatening the BBB ratings that are held by the majority of the industry today," wrote Kind. "Non-investment grade ratings would lead to a significant rerating of capital costs, credit availability, and investor receptivity to the sector."

This kind of scenario is what keeps utility regulators awake at night. And for good reason.

"The impact on customers would be dramatic in terms of increased revenue requirements . . , customer rates, and reduction in the availability of low-cost capital to enhance the system," said Kind.

The potential adverse consequences of such a "vicious cycle" has colored the debate over net metering and created concerns about the long-term viability of companies selling rooftop solar to utility customers.

The "vicious cycle" described by Kind happens all of the time to non-utility companies. However, historical data shows that utilities are far less susceptible to such "vicious cycle" than non-utilities.

In other words, the gloom and doom scenario dreamed up in Disruptive Challenges is not supported by the evidence – to put it mildly. Indeed, the only evidence-based analysis of utility credit ratings makes the risk of a rooftop-solar induced "death spiral" seem about as likely as the zombie apocalypse.

In 2009, two economists from the University of Alberta in Canada published an empirical analysis of the impacts of credit ratings on capital structure in the utility industry. In *Do Credit Ratings Reflect Underlying Firm Characteristics? Evidence from the Utility Industry*, Min Maung and Vikas Mehrotra examined the history of utility credit ratings between 1985 and 2006 to assess how utility ratings compared with ratings for non-utilities before and after deregulation. The paper also evaluated the effect of credit rating changes on utilities leverage ratios.

On the question of utilities and non-utilities credit ratings before and after a federal law (EPAct) introduced competition in power generation, the study concluded:

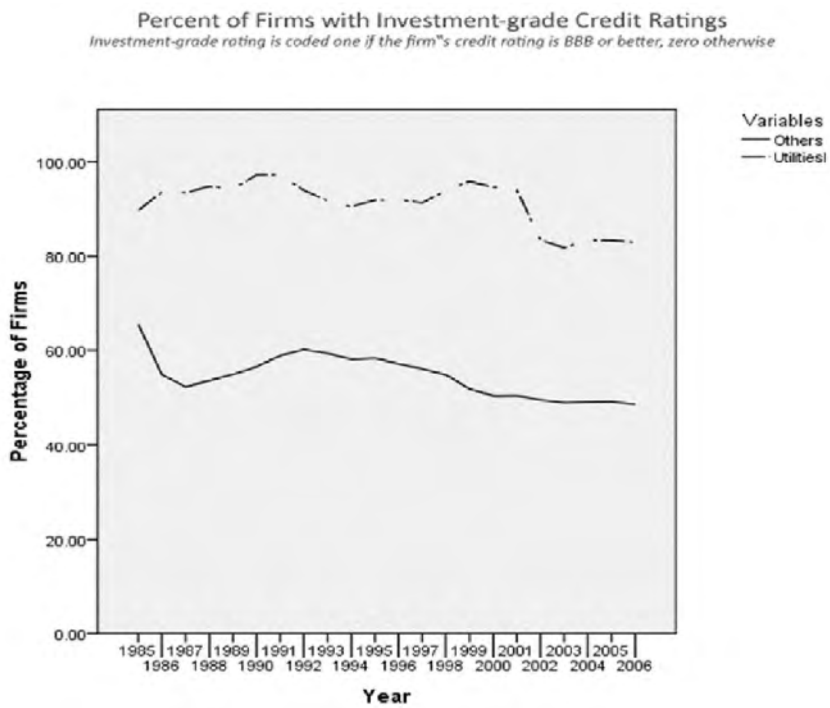
> Our results indicate that, over the full sample period of 1985-2006, the utility industry enjoys credit ratings that are higher than those of other industries. When we divide our sample to pre- and post-EPAct periods, our results run counter to the popular belief that the utility credit ratings have suffered following deregulation. *Following deregulation, the utility credit ratings remain high compared to firms in other industries. In fact, significance (and marginal effects) is even higher compared to that of the pre-EPAct period.*

To reiterate, the data shows that "utilities are more likely to receive investment-grade ratings compared to other firms, and this likelihood is higher for the post-EPAct period." In other words, the introduction of competition actually improved credit metric for utilities.

On the impact of credit rating changes on utilities leverage ratios, the study concluded that:

> Conventional wisdom suggests that credit downgrades would cause the cost of debt to rise as firms become riskier, and credit upgrades would imply an opposite effect. If utilities are conscious of the cost of debt and subsequent financial distress, they should downwardly adjust leverage ratios following credit downgrades, and upwardly adjust leverage ratios following upgrades. *We do not find evidence that utilities adjust their leverage ratios following*

The historical data suggests that the risk of a "vicious cycle" in the utility industry is hugely overstated in Disruptive Challenges.



And a considerable amount of additional evidence has materialized since the release of Disruptive Challenges corroborating this point. Not long after Disruptive Challenges appeared, Moody's Investor Service said that it would upgrade the credit ratings of utilities in deregulated states that had sold off all of their power plants.

"We view power generation as the highest-risk component of the electric utility business, as generation plants are typically the most expensive part of a utility's infrastructure (representing asset concentration risk) and are subject to the greatest risks in both construction and operation, including the risk that incurred costs will either not be recovered in rates or recovered with material delays," said Moody's.

Deregulated utilities like Consolidated Edison of New York face greater competition than vertically integrated utilities in fully regulated states like Florida Power & Light. According to Moody's, the former are actually less risky investments than the latter precisely because restructuring has shifted risks to non-utility owners of power plants – and customers.

"Other types of utilities may have lower business risk . . . due to factors that could include a generally greater transfer of risk to customers, very strong insulation from exposure to commodity price movements, good protection from volumetric risks, fairly limited capex needs and low exposure to

Indeed, if utilities have shifted risk to customers as Moody's indicates, then it is critical that regulators allow them to manage those risks by putting solar panels on their rooftops.

Find William Pentland on LinkedIn. Visit William's website.

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Rooftop Solar Dims Under Pressure From Utility Lobbyists

By Hiroko Tabuchi

July 8, 2017

Over the past six years, rooftop solar panel installations have seen explosive growth — as much as 900 percent by one estimate.

That growth has come to a shuddering stop this year, with a projected decline in new installations of 2 percent, according to projections from Bloomberg New Energy Finance.

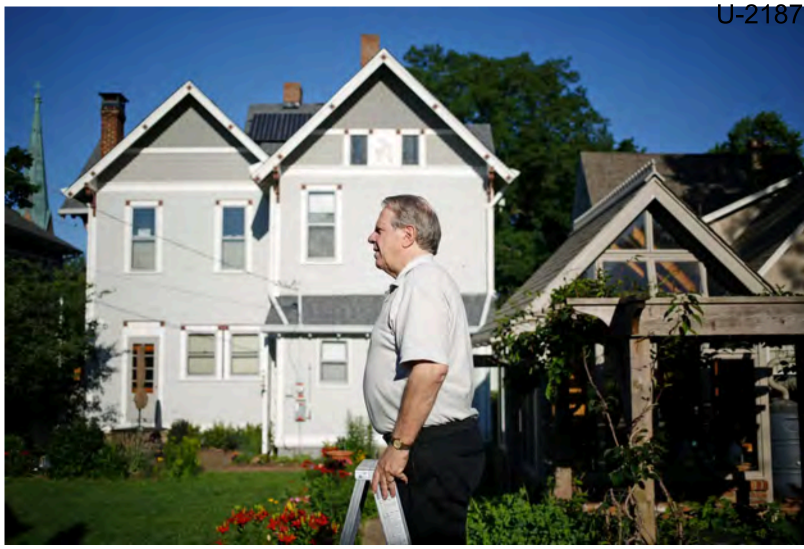
A number of factors are driving the reversal, from saturation in markets like California to financial woes at several top solar panel makers.

But the decline has also coincided with a concerted and well-funded lobbying campaign by traditional utilities, which have been working in state capitals across the country to reverse incentives for homeowners to install solar panels.

Utilities argue that rules allowing private solar customers to sell excess power back to the grid at the retail price — a practice known as net metering — can be unfair to homeowners who do not want or cannot afford their own solar installations.

Their effort has met with considerable success, dimming the prospects for renewable energy across the United States.

Prodded in part by the utilities' campaign, nearly every state in the country is engaged in a review of its solar energy policies. Since 2013, Hawaii, Nevada, Arizona, Maine and Indiana have decided to phase out net metering, crippling programs that spurred explosive growth in the rooftop solar market. (Nevada recently reversed its decision.)



Uncertainty over net metering in Indiana has “shut us down,” said Michael A. Mullett, a volunteer who has helped two dozen households sign up for solar panels since 2014.
Luke Sharrett for The New York Times

Many more states are considering new or higher fees on solar customers.

“We believe it is important to balance the needs of all customers,” Jeffrey Ostermayer of the Edison Electric Institute, the most prominent utility lobbying group, said in a statement.

The same group of investor-owned utilities is now poised to sway solar policy at the federal level. Brian McCormack, a former top executive at the Edison institute, is Energy Secretary Rick Perry’s chief of staff. The Energy Department did not make Mr. McCormack available for an interview.

In April, Mr. Perry ordered an examination of how renewable energy may be hurting conventional sources like coal, oil and natural gas, a study that environmentalists worry could upend federal policies that have fostered the rapid spread of solar and wind power.

Charged with spearheading the study, due this summer, is Mr. McCormack.

“There’s no doubt these utilities are out to kill rooftop solar, and they’re succeeding,” said David Pomerantz, executive director of the Energy and Policy Institute, a renewable energy advocacy group. “They’re now driving the agenda.”

A Statehouse Push

Early on a March morning in the Indiana State Capitol, under a mural of the Greek sun god Apollo, solar energy enthusiasts swarmed a committee hearing to defend the state's embattled solar policy.

A school superintendent said that his underfunded district needed solar power to reduce energy costs. A local farmer pleaded that his pine tree nursery depended on power from his solar panels. A Baptist pastor said he saw drawing energy from the sun as an "expression of our love of God's creation."

The coalition was fighting a losing battle.

A week before the Indiana committee hearing, a group of utility lobbyists descended on the statehouse, handing out talking points that said credits for rooftop solar panels lead to higher rates for everyone else. They were there to support a bill, sponsored by Senator Brandt Hershman, that would roll back Indiana's net metering system by reducing the rate utilities paid to solar consumers for their excess electricity.

Homeowners with solar panels "avoid paying for use of the grid, even though they use it almost constantly to buy or sell electricity," read a talking point prepared by Indiana's local investor-led utilities group, the Indiana Energy Association, and circulated among Republican state legislators.

Indiana's five investor-owned utilities are among the biggest contributors to Indiana's elected officials, together giving at least $3 million to mostly Republican candidates over the past four election cycles, according to campaign finance filings. They are also known to play an outsize role in drafting energy-related bills.

Mr. Hershman said utility contributions had not swayed him against net metering. He said his bill, which was passed and signed into law this spring, protects current solar customers by locking in their rates for many years.

"I receive donations from a wide variety of groups across the ideological spectrum because I tackle tough issues fairly, listen to both sides and promote good policy," he said by email.

The pushback against renewable energy has been years in the making.

Four years ago, the Edison institute, an industry group made up of the country's largest investor-owned electric companies, declared that the business of generating electricity was in danger of being sucked into what has since become known as a "utility death spiral."

As more consumers switched to rooftop solar and bought less electricity from the grid, the trade group worried in a 2013 document, the costs of running conventional coal, oil, gas or nuclear power plants would be shared among an ever-smaller customer base. That could cause rates to spike, chasing even more customers away.

The prospect of more customers "fully exiting from the grid," the group said, "raises the potential for irreparable damages to revenues and growth."

Brian McCormack, a former top executive at the Edison Energy Institute, a prominent utility lobbying group, is now chief of staff for Energy Secretary Rick Perry. Southern States Energy Board, via Flickr

Since then, the utilities have targeted state solar power incentives, particularly net metering, which credits solar customers for the electricity they generate but do not use and send back to the grid. That offsets the cost of electricity they may still buy from their local utility during cloudy days and at night, reducing or even eliminating their electricity bills.

Utilities argue that net metering, in place in over 40 states, turns many homeowners into free riders on the grid, giving them an unfair advantage over customers who do not want or cannot afford solar panels. The utilities say that means fewer ratepayers cover the huge costs of traditional power generation.

A study released this year by the federal Lawrence Berkeley National Laboratory, however, concluded that for the vast majority of states and utilities, the effects of rooftop solar credits on electricity rates for nonsolar customers would be negligible for the foreseeable future. The Edison institute disputes that study's findings.

To fashion a legislative response, utilities turned to the American Legislative Exchange Council, or ALEC, a conservative nonprofit that receives funding from the billionaire brothers Charles G. and David H. Koch.

In 2014, ALEC adopted model legislation to move away from net metering, which was then circulated among ALEC's network of state legislators. Mr. McCormack, then the Edison institute's vice president for political and external affairs, played a role in writing the model legislation.

Utilities found a receptive audience in many states.

Arizona legislators voted in December to move away from net metering, lowering the credit solar customers receive for the excess energy they generate and limiting how long customers keep their favorable rates.

In Florida last year, the utility industry contributed more than $21 million to an ultimately unsuccessful ballot initiative to ban third-party sales or leasing of rooftop solar panels. A leaked audio recording appeared to reveal that the utility campaign deliberately misled pro-solar voters into voting for an anti-solar policy, a tactic one consultant called "political jujitsu."

Expanding Effort

The latest utility resistance to residential solar in places like Indiana is striking because those states do not yet have big rooftop solar markets, said Autumn Proudlove, an analyst at the N.C. Clean Energy Technology Center at North Carolina State University. Only about 1,100 of Indiana's 2.5 million rate-paying households have signed up for net metering.

Driven by sharply falling costs, the United States last year added a record 15 gigawatts of solar capacity, enough to power around 2.8 million homes and more than any other source, including natural gas and coal. The bulk of that growth came from giant solar parks and other large projects run by solar producers and, in some cases, the utilities themselves. Large-scale wind projects have also grown rapidly, many in states carried by Donald J. Trump in the presidential election.

Some of the slowdown in smaller-scale rooftop solar has come in maturing markets in states like California, where rooftop solar companies are having trouble expanding their customer base beyond early adopters. Financial struggles at rooftop solar companies like SolarCity and Vivint have also weighed on growth.

Uncertainty over net metering in Indiana has slowed the market further. “It’s totally shut us down,” said Michael A. Mullett, a volunteer at Indiana’s Columbus Community Solar Initiative, who has helped two dozen households sign up for solar panels since 2014.

Still, at a January 2016 board meeting of the Edison institute, attended by chief executives of the country’s largest utilities, Thomas R. Kuhn, the group’s president, counseled against complacency.

“Years, ago, I think a lot of people said, ‘That’s not going to come to our area,’” he said, according to a recording of his remarks made available by a participant. “And now we see it in each and every state,” he said.

“E.E.I. is happy to come to any state at any time,” he added. “We have two dozen states we are working on.”

Installing solar panels atop a home in Goodyear, Ariz. In December, Arizona legislators voted to move away from net metering. Matt York/Associated Press

On March 14, the Edison institute hosted a fund-raising reception at the Mandarin Oriental Hotel in Washington for Senator Mitch McConnell, the majority leader. The cheapest tickets went for $5,000.

The reception underscored the utilities' attempt to cement ties with an administration that already appeared ambivalent toward any rapid shift to renewable energy.

The institute was still cheering the appointment of one from its ranks, Mr. McCormack, to a top job in the Energy Department. One of his first assignments is a study of how the changing electric generation mix, including renewables, is affecting the grid.

Proponents of renewable energy fear that the study could threaten policies at the federal level, like the renewables tax credits for businesses and homeowners, which have also spurred investment in wind and solar.

Shaylyn Hynes, a spokeswoman for the Energy Department, dismissed the environmentalists' concerns. "The department has no preconceived notions as to the findings and recommendations that will result from this review," she said.

Mr. McCormack has assigned Travis Fisher, a former economist at the Institute for Energy Research, a nonprofit funded by the Koch family foundations, to be principal author of the study.

Mr. Fisher did not respond to requests for comment. In a 2015 study, he called clean energy policies "the single greatest emerging threat" to the electric power grid. He called for canceling the Obama administration's Clean Power Plan, federal tax credits for solar and wind, state renewable energy targets and net metering.

"For those who want to ensure that Americans have access to reliable electricity long into the future," Mr. Fisher said in the study, "the time has come to push back."

***A correction was made on July 9, 2017**: An earlier version of this article described incorrectly an initiative on the ballot in Florida last November. The measure, which ultimately failed, would have banned third-party leasing of rooftop solar panels, not roll back net metering.*

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nytnews@nytimes.com. Learn more

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A version of this article appears in print on , Section A, Page 13 of the New York edition with the headline: After Rapid Growth, Rooftop Solar Programs Dim Under Pressure From Utility Lobbyists

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ARTICLES UTILITIES

EEI used anti-clean energy campaigns as role models in political boot camp for utility execs

By David Pomerantz
August 27, 2020

EEI warned of emerging policy threats, many motivated by climate

FirstEnergy campaign, now synonymous with corruption, presented as case study

Former Arizona Public Service lobbyist presented on clean energy opposition

EEI's posture appears out of step with ESG investor concerns

Georgetown faculty gave presentations to utilities

The trade association for investor-owned electric utilities ran a training camp last December to teach lobbyists and executives from the nation's utilities how to run winning political campaigns, using as case studies some of the most controversial efforts by utilities to defeat clean energy policies in recent years.

The Edison Electric Institute (EEI) hosted its week-long "Campaign Institute," at Georgetown University's business school in December 2019, billing the event as a "partnership with Georgetown University." Dozens of high-ranking government affairs and communications executives attended the training camp from companies like Alliant Energy, ConEdison, Dominion Energy, Duke Energy, DTE Energy, Entergy, Evergy, NationalGrid, NextEra Energy, PG&E, PNM, PPL, Xcel and their subsidiaries.

Materials from the week-long event obtained by the Energy and Policy Institute give the impression of an industry that perceives itself to be under siege from activists who are seeking a host of policy changes, many of them intended to force utilities to decarbonize in order to address climate change.

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"At Edison Electric Institute, we were seeing more and more that we have issues that are being litigated not only in state legislatures, public utility commissions, but also at the ballot box with ballot initiatives," EEI Executive Vice President of Public Policy and External Affairs Brian Wolff in a video from EEI promoting the Institute.

Screenshot from EEI's Campaign Institute video.

"We really want to educate and campaign-ready our companies and our executives and that's what we're doing at the Campaign Institute," Wolff continued.

EEI warned of emerging policy threats, many motivated by climate

In a presentation titled "Enduring and Emerging Industry Issues," EEI's Executive Director of External Affairs Brad Viator divided the "major categories of risk" facing utilities into three areas: Climate, Infrastructure Projects, and Business Model Changes.

Viator's presentation named more specific risks within each category, including:

Climate: "gas constraints along the coasts," including proposals to ban gas use in buildings in New York and Seattle; climate action by Congress after the election.

Infrastructure: "pipelines are increasingly difficult to build"; difficulty to build transmission lines and earn high profits from them.

Business Model: "restructuring proposals: NV, AZ, FL, VA?"; campaigns to bring investor-owned utilities under municipal control in "Pueblo [CO], California, Maine, New York, Chicago"; "community choice aggregation"; "pressure to create wholesale markets – CO and the Carolinas."

Viator also named solar net metering and renewable energy portfolio standards as ongoing challenges.

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Advocates are pursuing most of the policies that Viator named as challenges as levers to hasten the transition from fossil fuels to clean energy by utilities, which are not voluntarily decarbonizing at rates necessary to stave off the worst impacts of climate change.

Viator referenced "pressure to create wholesale markets" in the Carolinas, for instance. Analysts released a report this week noting how a regional transmission operator in the Southeast could reduce carbon emissions by 37 percent. Utilities in the Southeast oppose the idea, and a dark-money group that appears aligned with the industry has been running ads against it.

FirstEnergy campaign, now synonymous with corruption, presented as case study

The Campaign Institute's curriculum featured three case studies from utility companies. Two of those focused on highly controversial efforts by utilities to overturn or prevent clean energy-supportive policies.

One case study, from FirstEnergy, boasted of the company's work to pass HB 6 in Ohio and to defend the legislation from a repeal ballot initiative. HB 6 bailed out FirstEnergy's coal and nuclear plants and ended Ohio's clean energy and energy efficiency standards.

That effort by the company led to a bombshell scandal last month, when federal corruption charges stemming from HB 6's passage sent FirstEnergy's stock cratering and the company into turmoil, with customers and investors lining up to file class-action suits against the utility. Prosecutors have not charged FirstEnergy or its executives in the criminal case at this time.

FirstEnergy's VP for State and Local Government Affairs and Economic Development, Joel Bailey, presented on the HB 6 campaign along with Holland Consulting Services' Ken Holland.

The presentation described the broad history that led to HB 6 passage, including earlier failed efforts by FirstEnergy to secure bailouts from Ohio and from the Trump administration.

The slides did not reference the payment by FirstEnergy and its subsidiaries of over $60 million to a 501(c)(4) dark money group that formed the slush fund at the root of the federal bribery charges, but they did include a snapshot of the Ohioans for Energy Security website with the identifying domain name. Ohioans for Energy Security is the “front company” described by federal investigators as a major component of the criminal Enterprise at the heart of the alleged racketeering ring fueled by FirstEnergy's money.

Bailey and Holland's slides did note that "HB 6 Supporters also employed 'blockers' to mirror signature gatherers and provide counter messages" in an attempt to thwart an effort by environmentalists to repeal the law.

"This was the first time blockers were used in Ohio election process," the slide continued. "This gained considerable negative media attention [and] Allegations of illegal activity and intimidation."

EEI has not been shy in other settings about heaping praise on FirstEnergy for its now highly scandalous political work in Ohio. EEI gave its "Edwin D. Hill" award, which it presents to "leaders who advance issues at the state and local levels" to FirstEnergy and some of the union chapters that worked with it for their efforts to secure passage of HB 6.

"Winning the Ed Hill Award is the World Series in public policy – there's no greater honor to be honest with you," FirstEnergy SVP of External Affairs Michael Dowling said in a video about the award. The criminal charges filed in Ohio suggest that the indicted former House Speaker Householder spoke with Dowling 14 times by phone as he worked to pass HB 6.

"[FirstEnergy CEO] Chuck Jones put together a tremendous coalition to get the job done, including labor," EEI President Tom Kuhn said in the same video. "But he is such a fantastic leader for our industry. He cares, he cares about the industry, he cares about the customer, and he cares about the people, and his employees, so much. And when he has an issue like this to deal with, he throws himself totally into it. He passionately believes it, and that was a major driver to make this thing happen."

Update: The video below was removed from public view on YouTube and from a company press release after FirstEnergy and HB 6 became embroiled in the federal bribery investigation. The Energy and Policy Institute uploaded a copy of the video made before it was deleted to YouTube and Vimeo to make it public again.

Former Arizona Public Service lobbyist presented on clean energy opposition

Another case study at the Georgetown meeting, from Arizona Public Service, boasted of how that company defeated a 2018 ballot initiative that would have required utilities in Arizona to produce half of their electricity from clean sources by 2030.

APS spent nearly $40 million to successfully defeat that effort, but its opposition to the measure, along with unpopular rate hikes and controversial spending to influence the election of its regulators in 2014 and 2016, led to APS' growing political toxicity in Arizona. Within 18 months of the ballot initiative, APS's CEO had resigned amid controversy, and the company had committed to almost the exact same clean energy pathway the ballot initiative, Prop 127, would have required of it.

Based on notes in a powerpoint presentation, participants at the Georgetown meeting would have heard from Arizona Public Service's ex-CEO Don Brandt and from Vice President of External Affairs Jessica Pacheco on how the company was able to defeat the initiative.

It's not clear if Brandt attended the meeting, or dialed into it. His speaker notes indicated that he targeted Tom Steyer and former commissioner Kris Mayes. "Here you see former Arizona Corporation Commission chairman Kris Mayes with Tom Steyer, who has provided funding for her aggressively anti-utility agenda. In attempting to change the state's constitution, Mayes built a close partnership with out-of-state money (much of it from Steyer) because few in state will do business with her," Brandt said, according to the notes.

Brandt's notes also attacked the media as biased against his industry.

"Even if you have a good working relationship with your local media, they are not your friend. They need a villain — and too often it is us. The standard approach is anti-corporation. We can navigate through it if we understand it."

Brandt also planned to say, per his notes, that he would "encourage you to engage with your partners at the national and local levels and with industry associations — NEI, EEI, NAM, chambers of commerce to name a few. Engage them and coordinate efforts. Make sure they are up to speed and understand what is happening on the ground. Tom Kuhn and his staff at EEI were with us each step of the way, and their efforts were much appreciated."

EEI President Tom Kuhn

"There is nobody who sees your message who should not understand it," Pacheco said, according to the speaking notes. "What is Prop 127 going to do? It is going to raise your bills."

The message that Prop 127 would raise customers bills was indeed the utility's message throughout 2018, but by the time of Pacheco's presentation at Georgetown in late 2019, the company's new leadership appeared to be singing a different tune. A month later in January, APS' new CEO Jeff Guldner committed the company to voluntarily meet a nearly identical goal to what Prop 127 would have mandated – 45 percent renewable energy by 2030. In that announcement, APS said that it would transition to clean energy "while maintaining affordable, reliable service for our customers."

Pacheco was the key architect behind APS' spending via dark-money groups to influence the election of its regulators on the Arizona Corporation Commission in 2014, beginning a period during which APS' political reputation grew increasingly toxic; shareholder analysts have increasingly called that toxicity a major risk to the company.

Brandt left APS in November 2019. Pacheco will leave APS in early October of this year, according to an email Guldner sent last week.

The third utility presentation was from NV Energy, which described its successful defeat of a ballot initiative that would have restructured Nevada's energy market, breaking the company's monopoly over retail electricity sales.

EEI's posture appears out of step with ESG investor concerns

EEI's highlighting of the Ohio and Arizona case studies indicates that while it aggressively works to rebrand the utility sector as clean, the trade association was, as of December, continuing to pursue a hostile posture toward many clean energy policies, and to at least look the other way on dark-money efforts by utilities to win political victories.

Those stances are increasingly out of step with the demands of large segments of "ESG" investors – those interested in environment, social and governance – as well as some mainstream investors

In the wake of the FirstEnergy HB 6 scandal, analysts from Bank of America wrote notes examining which other utilities may be exposed to risks of dark-money spending of the type that FirstEnergy pursued and which led to the corruption charges there. Dark-money spending and other astroturf campaigns have been common in the utility sector in recent years.

A Norwegian asset manager just divested from Southern Company over that utility's anti-climate political advocacy, echoing previous calls by other large asset managers for utilities to align their political advocacy with the Paris Agreement.

Georgetown faculty gave presentations to utilities

In addition to hearing the case studies, the utility executives received presentations from outside consultants, PR firms like Adfero and Georgetown faculty, who gave presentations with titles like "Communicating with Special Interests" and "CSR: Or How to Avoid a Campaign."

"Avoid pay for play; Real partnerships/relationships" read one slide in a presentation from Mary Cheney of New Troy Strategies.

Another presentation from an election lawyer at Ballard Spahr offered utilities guidance on how to avoid violating laws when spending on elections; much of the guidance runs contrary to the case studies presented by FirstEnergy and APS.

"The best advocacy campaign can quickly derail into a legal and public relations nightmare if you don't comply with the law," a description of the session says, offering prescience into the scandal that would burst into the open a few months later in Ohio.

In the actual presentation, the lawyer advised: "Do not be the sole or dominant funder of an organization (if you want it to be viewed as "independent")," as APS has been for ballot initiatives and independent expenditures in Arizona elections for years.

A presentation from communications consultant Michael Maslansky, who for years has offered guidance to EEI on how utilities can brand themselves as greener to customers, noted that "we've lost the benefit of the doubt" and that "they challenge your motives" in a slide showing pictures of utility foundations offering checks to charities. Utilities often use their charities tactically to support their political agenda.

"What's the message to protect the role of natural gas?" Maslansky asks the executives to consider in another slide.

EEI's operating budget is funded by dues paid by the utilities, which in turn recover those costs from ratepayers. That means that the costs of EEI's Campaign Institute and its partnership with Georgetown University would likely have been paid out of utility customers' electric bills.

Georgetown University announced in February of this year that it plans to divest from public securities of fossil fuel companies within the next five years.

August 17, 2021: This post was updated above to include a copy of a FirstEnergy video that was removed from public view, and made public again here by the Energy and Policy Institute.

TAGS: HB 6 | OHIOANS FOR ENERGY SECURITY

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LETTER

The American electric utility industry's role in promoting climate denial, doubt, and delay

Emily L Williams[*], **Sydney A Bartone, Emma K Swanson and Leah C Stokes**

University of California Santa Barbara, Santa Barbara, California, United States of America

[*] Author to whom any correspondence should be addressed.

E-mail: ewilliams@ucsb.edu

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Supplementary material for this article is available online

Abstract

It is now well established that fossil fuel companies contributed to undermining climate science and action. In this paper, we examine the extent to which American electric utilities and affiliated organizations' public messaging contributed to climate denial, doubt, and delay. We examined 188 documents on climate change authored by organizations in and affiliated with the utility industry from 1968 to 2019. Before 1980, electric utilities' messaging was generally in-line with the scientific understanding of climate change. However, from 1990 to 2000, utility organizations founded and funded front groups that promoted climate doubt and denial. After 2000, these front groups were largely shut down, and utility organizations shifted to arguing for delayed action on climate change, by highlighting the responsibility of other sectors and promoting actions other than cleaning up the electricity system. Overall, our results suggest that electric utility industry organizations have promoted messaging designed to avoid taking action on reducing pollution over multiple decades. Notably, many of the utilities most engaged in communicating climate doubt and denial in the past currently have the slowest plans to decarbonize their electricity mix.

1. Introduction

For decades, oil and gas companies have misled the public on climate science. Despite conducting their own research that showed climate change was real, these companies publicly sowed doubt about its existence and human cause (Oreskes and Conway 2010, Frumhoff *et al* 2015, Hall 2015, Supran and Oreskes 2017, Bonneuil *et al* 2021, Green *et al* 2021). While it is now well established that the fossil fuel industry undermined climate science, there is less research on other industries' role (Anderson *et al* 2017, Tried-man *et al* 2019). In this paper, we examine the extent to which the American electric utility industry promoted climate denial, doubt, and delay.

In the 1960s and 1970s, fossil fuel companies and electric utilities knew that fossil fuel combustion was driving climate change, with many conducting in-house research on the issue (Hall 2015, Anderson *et al* 2017, Franta 2018). For example, the Electric Power Research Institute (EPRI) authored an internal memo in 1977 stating 'the atmospheric CO_2 concentration is projected to double (to ≈600 ppm) by the year 2030. A simplistic climate model developed at Princeton predicts a 2 °C increase in the global mean temperature if CO_2 is doubled' (Hakkarinen 1977, p 1). This prediction remains largely correct, more than four decades later. By the late 1980s, climate change was understood as real, human-caused, and serious. In 1988, when James Hansen testified to the U.S. Senate, climate change transitioned from a scientific discussion to a major policy issue (Frumhoff *et al* 2015, Bolsen and Shapiro 2018). The Intergovernmental Panel on Climate Change (IPCC), the leading body on climate science, published their first report in 1990, and stated with certainty that anthropogenic greenhouse gas emissions were contributing to climate change (IPCC 1990, p xi).

In response to the growing scientific consensus, organizations with financial interests in fossil fuels worked to discredit climate science and scientists, spread doubt, and delay the energy transition (Dunlap and McCright 2015, Farrell 2016, Brulle 2019). Sociologist Robert Brulle (2019) refers to this widespread disinformation campaign as the U.S. Climate Change Countermovement. An array of corporations, trade associations, lobbying firms, conservative think-tanks, and faith-based organizations collectively built climate disinformation campaigns. A variety of sectors participated, including the oil and gas industry, the coal-rail-steel sector, and the electric utility industry (Brulle 2019, Stokes 2020). These industries often created front groups in order to mask their involvement in spreading disinformation, motivated by their financial interests in fossil fuels (Brulle 2019, Dunlap and Brulle 2020, Stokes 2020). Climate denial, doubt, and delay have proven profitable for these sectors, allowing them to invest in polluting infrastructure for several decades longer than scientists have advised is safe (Tong *et al* 2019).

These industries' strategy to undermine climate science was developed from disinformation campaigns on acid rain and other environmental issues—campaigns that the utility industry also participated in (Oreskes and Conway 2010). For example, utility organizations ran ads in the 1970s and 1980s which largely acknowledged the link between sulfur dioxide and acid rain, yet misleadingly argued that pollution control technologies were infeasible and unnecessary (Anderson *et al* 2017). On climate change, politicizing scientific findings is the most well-documented tactic used in disinformation campaigns, including denying or sowing doubt regarding the existence, cause, or seriousness of the issue (McCright and Dunlap 2011, Farrell 2016, Supran and Oreskes 2017, Bolsen and Shapiro 2018, Franta 2021). Industries have also argued that they should delay taking action on reducing pollution, for example because solutions are too expensive, infeasible, or because others should be acting (Freudenburg 2005, Lamb *et al* 2020, Supran and Oreskes 2021). Collectively, disinformation campaigns affect media coverage, public opinion, and the likelihood of political action on climate, ultimately resulting in more greenhouse gas emissions due to political gridlock and inaction (Freudenburg and Muselli 2010, Farrell 2016, Bolsen and Shapiro 2018, Mildenberger 2020, Stokes 2020).

We undertook a systematic analysis of messaging on climate from members of the American electric utility industry over time. We collected and coded industry documents authored by individual electric utilities, trade associations, affiliated research groups, and front groups. Our sample includes 188 documents from 1968 to 2019. We classified statements regarding the existence, causes, and impacts of climate change, and its solvability, examining whether utility industry messaging diverged from the scientific consensus. We found that significant parts of the utility industry were active in promoting climate denial, doubt, and/or delay over multiple decades. Before 1980, electric utilities' messaging generally aligned with scientific knowledge at the time. However, from 1990 to 2000, utility organizations cast doubt on climate science, while simultaneously creating and funding front groups who promoted climate denial. Since many utilities are monopolies, these climate denial campaigns were often funded using money derived from captured customers, who could not choose to buy from a different company.

After 2000, many of the electric utility front groups were shut down, and official industry organizations largely shifted to arguing for delay. Since 2015, while much of the industry's messaging has largely acknowledged the scientific fact of climate change, delay messages are still common. Unlike fossil fuel companies, the electric utility industry's product is not fossil fuels. Clean energy coupled with electrification presents an opportunity for electric utilities to decarbonize and grow their business. To date, however, most of the industry has failed to do so at the pace and scale that is necessary. Notably, we also found that the utilities who were the most involved in promoting climate doubt and denial are also some of the dirtiest utilities operating today, with the slowest plans to transition to clean energy.

2. Methods

The American electric utility industry is made up of a variety of utilities including investor-owned, municipal, cooperative, and federal entities who produce and distribute electricity. These organizations coordinate through trade associations and other networks, including the Edison Electric Institute (EEI) and EPRI. EEI is the trade association for the investor-owned utilities. EPRI, 'incubated' under EEI and funded by the electric utility industry, is a non-profit energy research and development organization which conducts and publishes analyses, including on climate science and its implications for the sector (Lindgren 1972). In addition, some utilities have engaged with front groups, which are generally short-lived organizations designed to advance certain messaging while hiding their motives and funding sources (Brulle 2019, Dunlap and Brulle 2020, Stokes 2020).

We based our analysis on several samples of documents. First, we aimed to collect the known denial and doubt documents utility organizations and their affiliated front groups authored. This set was retrieved from the Climate Investigation Center, Climate Files, and an Energy and Policy Institute report (Anderson *et al* 2017). Some of these documents were public facing, while others were internal. To the best of our knowledge, for the two relatively short-lived denial front groups associated with the industry—the Information Council on the Environment (ICE) and the Greening Earth Society (GES)—all publicly available documents were included in the analysis.

For the longer-lived Global Climate Coalition (GCC), we built a temporally representative sample. We also examined membership lists for the GCC, and for those utilities frequently mentioned, we added additional documents from these companies, including shareholder reports (see supplementary Information, SI). Our aim was to understand how utilities associated with climate denial organizations were messaging externally on climate. In addition, we located documents and membership lists from utility-affiliated organizations who are or were associated with climate denial, doubt, and/or delay. These include the American Legislative Exchange Council (ALEC), the Utility Air Regulatory Group (UARG), and American Coalition for Clean Coal Electricity (ACCCE).

We also aimed to create a representative set of public facing documents on climate change from EEI and EPRI, with the goal of capturing overall industry messaging on climate. We drew a random sample of articles from these organization's periodicals, Electric Perspectives (1995–2019) and EPRI Journal (1976–2019), that mentioned the terms 'climate change', 'global warming', 'carbon dioxide', or 'greenhouse gas' (see SI).

Overall, this approach yielded 188 primary documents published between 1968 and 2019, authored by 26 organizations in the American electric utility industry (Williams *et al* 2021). Further information on the documents, including the temporal spread and a repository, is available in the SI. All documents reference climate change and are either authored by, or use direct quotes from, electric utility industry companies, research groups, trade associations, or other organizations which electric utilities founded or held membership.

Relationships between the organizations in the sample were mapped to understand their connections. To do this, we retrieved membership lists from the sample, two external reports (Anderson *et al* 2017, Triedman *et al* 2019), online repositories, and peer-reviewed research (Brulle 2019). In cases where the ownership or name of a utility changed, we use the current name and reference previous entities.

Notably, this approach is intended to ensure that utilities significantly involved in climate denial, doubt and/or delay are captured. Significant involvement is defined by membership in, funding of, or founding of climate front groups, or directly communicating climate doubt, denial, and/or delay. It therefore does not provide a representative sample of the full industry which could help determine the messaging of the average utility over time. That said, our sample of EEI and EPRI documents does provide representative information on how a central industry trade association and research group communicated about climate. In addition, some utilities that were found on membership lists for climate denial front groups were not examined further because there were no known denial or doubt documents authored by these organizations at the time of this analysis. Since many climate denial documents are internal, it is likely that further information exists on utilities' involvement in climate denial organizations that is not public.

The primary documents were coded using Atlas.TI, a qualitative analysis software. Documents were classified by author (the organization who authored the document), type (whether the document is internal or external), and year of publication. We developed a coding scheme modeled on the approach taken in Supran and Oreskes (2017) and incorporating discourses of climate delay introduced by Lamb *et al* (2020). We coded passages in the documents into categories based on their statements on climate change's existence (endorsement points, EPs), cause (human-caused points, HPs), impacts (impact points, IPs), and solvability (solvable points, SPs) (SI table 1). Each code category was designed to contain mutually exclusive levels (e.g. EP1, EP2, EP3).

Coding was conducted in two rounds; in each round, every document was coded independently by two separate coders. The first round of coding was at the document level, where relevant passages and code categories were identified for each document. In the second round, each passage was coded, and then document-level codes were assigned based on the frequency of passage-level codes used. If the document-level codes did not have inter-coder agreement (ICA), a third coder independently coded the document, and the most often applied code was ultimately assigned to the document. An ICA of 92% was reached for the EP, HP, and IP codes on the document-level codes, and an ICA of 88% was reached for the SP codes. Of the 188 documents analyzed, 151 were coded with at least one code—the remaining 37 documents mainly provided background information on the organizations.

Unique code combinations were reclassified into messaging categories: acknowledgement, delay, doubt, and denial (table 1). 'Acknowledgement' documents recognize that the climate is changing or will change (EP1), that human activity is the primary cause (HP1), and that impacts are primarily bad or unknown (IP1 or IP2). 'Doubt' documents convey uncertainty that the climate is changing or will change (EP2) and/or uncertainty as to whether human activity is the primary cause (HP2) and whether the impacts are serious (IP1 or IP2). 'Denial' documents either deny that the climate is changing or will change (EP3), deny that human activity is the primary cause of that change (HP3), or deny that there will be significant negative impacts (IP3). Finally, 'delay' documents acknowledge the scientific consensus (EP1, HP1, IP1/2), yet use rhetoric to deflect, delay, or distract from solutions (SP2/SP3).

3. Results

3.1. Mapping the network

Figure 1 and table 2 depict relationships between electric utility industry organizations and organizations

Table 1. Climate messaging categories.

	Science Questions			Policy Questions
	Is the climate changing/projected to change? *(Endorsement Points: EP)*	Is human activity the primary cause of climate change? *(Human-cause Points: HP)*	Are the current or projected impacts of climate change serious? *(Impact Points: IP)*	Is climate change solvable? If so, does the industry have a responsibility to reduce emissions? *(Solvable Points: SP)*
Acknowledgement: Document must acknowledge/endorse all science questions.	The climate is changing/projected to change (EP1).	Human activity is the primary cause of current or projected climate change (HP1)	The impacts of climate change are, or will be, primarily bad (IP1).	It is solvable, and the (partial) responsibility of utility companies (SP1). OR n/a.
Delay: Document must acknowledge/endorse all science questions.	The climate is changing/projected to change (EP1).	Human activity is the primary cause of current or projected climate change (HP1)	The impacts of climate change are, or will be, primarily bad (IP1).	More research is needed before taking action, it is the (primary) responsibility of another entity, or solutions must include continued use of fossil fuels (SP2). OR Climate change is not solvable (SP3).
Doubt: Document must doubt at least one science question. It may acknowledge the others.	The climate may be currently changing/may change in the future (EP2).	Human activity may be the cause of climate change (HP2).	The impacts may be bad (IP2).	n/a
Denial: Document must deny at least one science question. It may acknowledge or doubt the others.	The climate is (will) not changing (change) (EP3).	Human activity is not the cause of climate change (HP3).	The impacts do/will not exist, are overstated, or the benefits will outweigh the costs (IP3).	n/a

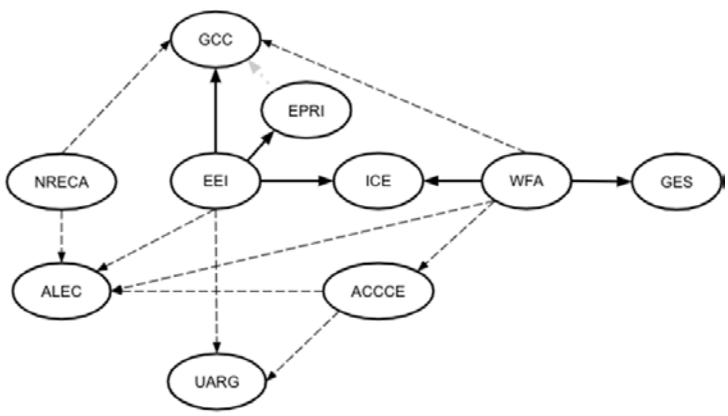

Figure 1. Organizational network map depicting relationships between utility trade groups, research groups, front groups, and campaigns in the document sample. Solid arrows indicate an organization founded, and was a member of and/or participated in meetings and communications of another; dashed arrows indicate an organization was a member of and participated in meetings or communications of another; gray dotted lines indicate organizations participated in meetings or communications together.

that have promoted climate denial, doubt, and/or delay messaging. Electric utilities were related to three climate denial front groups: GCC, ICE, and GES. The GCC was one of the first and most prolific climate disinformation campaigns (Brulle 2019). It had strong links with the electric utility industry: EEI, American Electric Power (AEP), Consumers Energy, and Southern Company were co-founders of the GCC (see SI). Over a quarter of the GCC's members–and by extension funders–came from the industry, including the National Rural Electric Cooperative Association (NRECA) (GCC 1991, Brulle 2019). Both EPRI and

Table 2. Utilities' involvement in CCCM organizations in figure 1 and measures of pollution for these utilities. All depicted UARG links are valid for 2017. ICE membership is fully inclusive to the best of our knowledge. All links for GCC, ALEC, and ACCCE are included, regardless of year of involvement. Utility organization involvement in GCC varies across years (see SI). For ALEC and ACCCE, since these organizations do not make their membership public, a lack of reported connection does not mean no connection exists, but that no connection was identified in this research.

	ACCCE	ALEC[d]	GCC[e]	ICE[f]	UARG[g]	Climate Score based on plans[h]	Standardized emissions (lbs CO_2/MWH)[i]
Southern Company	Member[a]	Member	Founder, member	Member	Member	5	1000
American Electric Power (AEP)	Member[a]	Sponsor, member	Founder, member		Member	29	1500
Ameren (formerly Union Electric and Illinois Power)	Member[b]	Sponsor, member	Member		Member	24	1500
Duke	Member[b]	Sponsor, member	Member		Member	2	900
Arizona Public Service (APS) (Pinnacle West)		Funder, member	Member	Member	Member	34	1000
DTE Energy (formerly Detroit Edison)	Member[b]	Member			Member	22	1500
FirstEnergy (formerly Ohio Edison and Pennsylvania Power)	Member[b]		Member		Member	0	1000
Consumers Energy	Member[c]		Founder, member		Member	43	1750
Dominion (formerly Virginia Power)		Member	Member		Member	27	600
Northern Indiana Public Service Company (NIPSCO) (NiSource)		Sponsor	Member		Member	82	1800
Entergy		Sponsor, member				33	600
Southern California Edison (SCE)		Member				Not in the 50 dirtiest utilities	400

[a] ACCCE (2018).
[b] Smyth (2016).
[c] DeSmog (2022a).
[d] SourceWatch (2022).
[e] See SI.
[f] Information Council for the Environment (1991).
[g] Utility Air Regulatory Group (2017).
[h] Romankiewicz *et al* (2020).
[i] Bradley (2021).

EEI were active participants in the GCC's Science and Technology Assessment Committee meetings (GCC 1997).

ICE was a short-lived, pilot climate denial campaign, whose primary goal was to '[r]eposition global warming as theory (not fact)' through both print and radio advertisements (ICE 1991, p 7). This campaign was co-founded by EEI and the Western Fuels Association (WFA), which is a utility association composed of coal providers and rural electric cooperatives (Monbiot 2009, Mulvey and Shulman 2015, DeSmog 2022b). Individual utilities were also involved in ICE, including Southern Company as a funder of ICE, and Arizona Public Service (APS)—though APS 'reserve[d] the right to distance' themselves from ICE activities (Information Council for the Environment 1991, p 5, 8). With the collapse of ICE, WFA next founded GES in 1997, a campaign which operated until 2005 (GES 2005). GES similarly produced print advertisements and videos that undermined climate science.

In addition to founding and participating in climate denial front groups, utility industry organizations have also lobbied against climate legislation while promoting messages of denial, doubt, and delay. Work to delay climate action has primarily occurred through three organizations: ALEC, the UARG, and America's Power. Founded in 1973, ALEC brings together corporate interest groups with conservative state legislators. It writes model legislation on a range of issues, including rolling back renewable energy laws (Stokes 2020). As of 2022, it continued to promote climate denial, stating: 'Global Climate Change is Inevitable. Climate change is a historical phenomenon and the debate will continue on the significance of natural and anthropogenic contributions' (ALEC 2022). While its membership is not publicly shared, documents show numerous utilities were members and funders of ALEC over the years (Anderson *et al* 2017, ALEC 2018, Triedman *et al* 2019, Energy and Policy Institute 2022, DeSmog 2022b). As of 2019, Duke, APS, NRECA, and EEI were still participating in ALEC meetings (Surgey 2019).

The UARG was a utility association founded in the 1970s to resist Clean Air Act regulations (Lazarus 2020). It filed numerous lawsuits and comments on behalf of electric utilities to fight climate policy, at times promoting climate doubt, before dissolving in 2019 (UARG 2009, Kasper 2021). Many utilities terminated their membership in UARG during a congressional investigation that showed ratepayer funds were used to support this climate delay organization. For example, the Tennessee Valley Authority (TVA) used millions of dollars of customer revenues over several decades to fund UARG lawsuits blocking climate action (Kasper 2021; e.g. UARG 2017). However, despite the controversy, several utilities and associations remained members of UARG until its dissolution in 2019, including EEI, AEP, Ameren, FirstEnergy, TVA, and Southern Company (Bade 2019, Kasper 2019).

America's Power, formerly known as the ACCCE, is a pro-coal advocacy organization that has lobbied heavily against climate legislation (Anderson *et al* 2017, Brulle 2019). ACCCE led the effort to rebrand coal, pushing the image of 'clean coal' and emphasizing the 'social benefits of carbon' (Management Information Services 2014, Anderson *et al* 2017). At its peak, it derived half of its members from the electric utility industry (Brulle 2019). While Ameren, FirstEnergy, Duke, and DTE Energy left ACCCE before 2016, AEP and Southern Company stayed until 2019 (Smyth 2016, ACCCE 2018, Energy and Policy Institute 2022).

Table 2 summarizes the relationships identified in our sample between individual electric utilities and these groups; the table is ordered by frequency of involvement. The utilities listed in the table were all authors of documents in the sample or listed regularly in GCC membership lists (see SI). All electric utilities in table 2 are members of EPRI and EEI (EPRI 2006, EEI 2019). As formal membership lists are not available for ALEC and ICE, we detail contributions, coordination, or otherwise documented cooperation. Ten utilities stand out as being extensively involved in climate denial, doubt, and delay. These utilities had documented participation or membership in three or more known climate denial, doubt and/or delay organizations: Southern Company, AEP, Ameren, Duke, APS, DTE, FirstEnergy, Consumers Energy, Dominion, and Northern Indiana Public Service Company (NIPSCO).

Notably, many of the ten utilities most extensively involved in climate denial stand out as the largest polluters in the industry today. Table 2 summarizes two measures of pollution for these utilities (see SI for details on these measures). The climate score is based on the 50 dirtiest utilities' plans to retire coal, build new gas capacity, and build clean energy infrastructure (Romankiewicz *et al* 2020). Nine out of ten utilities who were extensively involved in promoting climate denial, doubt and delay have poor climate plans. A second score, developed with two major utilities, shows current standardized emissions in CO_2/megawatt-hour (MWH) for the utilities in our sample (Bradley 2021). Here again, the ten utilities extensively involved in climate denial generally stand out as some of the dirtiest in the industry today. This suggests that utilities with significant investments in fossil fuels promoted climate denial based on their material interests.

3.2. Tracing the utility industry's messaging on climate change over time

Using our document sample, we examine how the utility industry messaged on climate change over time. If their public communications tracked with the scientific consensus, we should *not* expect to find

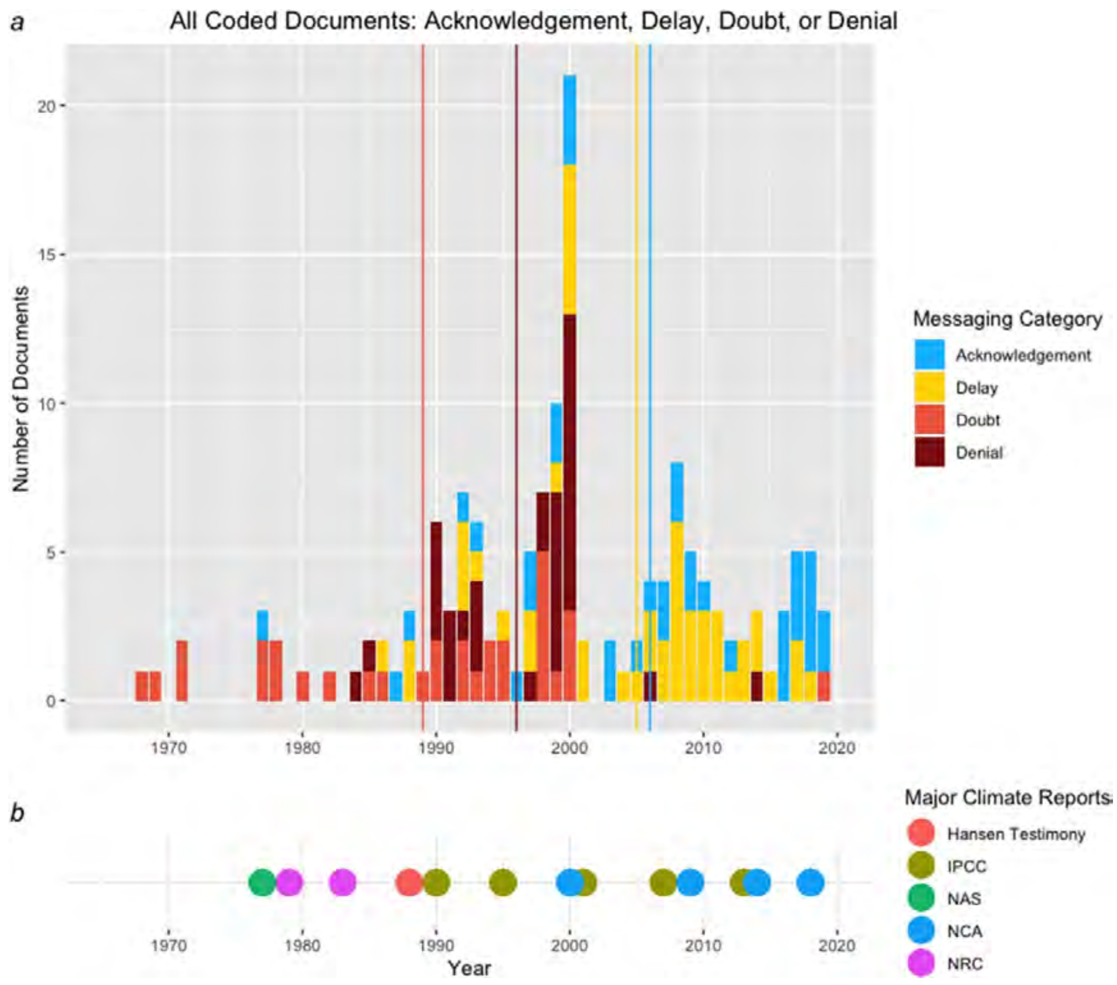

Figure 2. Temporal distribution of categorized codes for all documents (a). Taking the average year for documents in each messaging category, acknowledgement documents are centered in 2006, delay documents are centered in 2005, doubt documents are centered in 1989, and denial documents are centered in 1996 (years indicated as vertical lines). Major climate reports are shown (b) from the IPCC (olive), National Climate Assessment (blue), National Research Council (magenta), National Academies of Science (green), and Hansen congressional testimony (red).

evidence of doubt regarding the existence and cause of climate change after 1990 at the latest. The utility industry was aware of the climate science developments of the 1980s, having conducted some of its own research. However, our analysis indicates that the industry communicated climate denial and doubt throughout the 1990s, after the scientific consensus was established (figure 2(a)). Doubt was most common in the early part of the study period, when the scientific consensus on human-caused climate change was still emerging. As such, a degree of uncertainty during this time could be considered reasonable. However, nearly half of the doubt documents in our sample are found after Hansen's 1988 testimony (figure 2(b)). In addition, denial documents are centered in 1996, indicating an industry-wide shift from doubt to denial during the time the scientific consensus on climate change became public. In other words: as science increasingly showed climate change existed and was human caused, some utility industry organizations shifted increasingly toward climate denial.

After 2000, the documents indicate an industry-wide shift towards communicating delay. During this time, while most (95%) documents implicitly or explicitly acknowledged that climate change existed and was human-caused, over half of the documents contained 'delay' rhetoric, deflecting responsibility onto other countries or sectors, or arguing for the necessity of continued reliance on fossil fuels for electricity generation. The only organizations in the sample communicating denial or doubt after 2000 were CORE Electric Cooperative (formerly intermountain rural electric association, or IREA, in 2005), ACCCE (in 2014), and ALEC (in 2019) (figure 2(a)).

While patterns exist for the utility industry in our sample (figure 2), messaging varied by organization. To examine how individual organizations within the utility industry communicated publicly about climate change, we examined documents from the five primary organizations in our sample (figure 3). Comparison across all five organizations is only possible in the 1990s, when all were active. From 1990 to 2000,

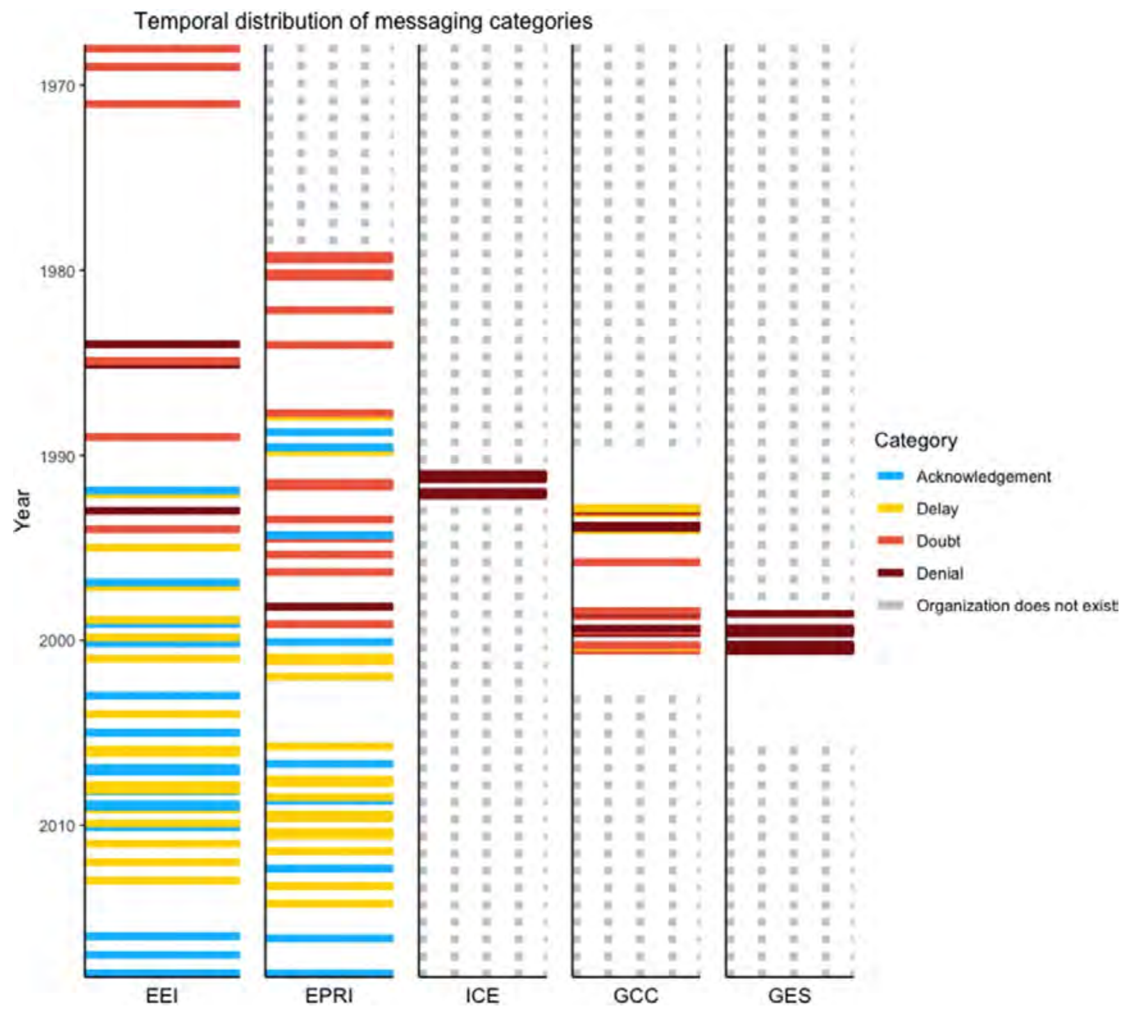

Figure 3. Temporal distribution of categorized codes for the five primary organizations in the sample. Years before an organization's founding or after its dissolution are shown in gray. Thick lines represent multiple documents, while thin lines represent a single document.

both EPRI and EEI had mixed communications that mostly included doubt, with some denial, delay, and even acknowledgment. However, during this same period, the front groups that were funded and/or otherwise supported by the industry—GCC, ICE, and GES—all spread climate doubt and denial. As ICE and GCC were cofounded by EEI (figure 1), this demonstrates that electric utility industry organizations, like their counterparts in the oil and gas industry, used front groups to undermine climate science. These front groups were short-lived, all dissolving around 2000; after 2000, official industry organization messaging transitioned to a mix of acknowledgement and delay.

3.3. Examining EEI and EPRI's climate messaging over time

Our sample includes a representative set of documents from EEI and EPRI, two important organizations within the electric utility industry. In this section, we unpack both organizations' messaging on climate change over the past 50 years in greater detail. We identify certain patterns in messaging in our representative sample of EEI and EPRI's journals. Before 1990, both organizations communicated doubt about climate change (figure 3). Yet, even after the scientific consensus crystalized, in the 1990s, both organizations continued to communicate denial, doubt, and delay. After 2000, both EEI and EPRI have alternated between delay and acknowledgement.

In the 1970s, both EEI and EPRI recognized that if climate change was real and human-caused, the implications for the industry would be enormous. A 1977 *EPRI Journal* article stated: 'if [climate change turned] out to be of major concern, then fossil fuel combustion will be essentially unacceptable' (Comar 1977, p 14). EEI's bulletin published a similar article in 1971: '[i]f we had to stop producing CO_2, no coal, oil, or gas could be burned… The only possible alternative is nuclear energy…' (Wilson 1971, p 181). While EPRI and EEI documents from the 1970s emphasize uncertainties in climate science, they also stated that action should not be delayed given serious climate impacts. One *EPRI Journal* article ended by quoting scientist William Kellog: 'If we wait to let the atmosphere perform the carbon dioxide experiment…it will be too late to do much about it if a warmer earth should prove to be a sadder earth' (Terra 1978, p 27).

In the 1980s, EPRI and EEI messaging continued to grapple with climate science uncertainty yet argued increasingly for delay. One EPRI article from 1986 presented a range of views from 'we have to conduct a lot more scientific research before we do anything else' to 'we do know enough to mitigate the greenhouse effect' (Shepard 1986, pp 13–15). That same year an *EPRI Journal* editorial argued that the 'decision will be easier to make and will be better designed if we know more about the science of the issue' (Malès 1986, p 2). Similarly, a 1989 EEI article stated: 'any plan calling for urgent and extreme action to reduce utility CO_2 emissions is premature at best' (McCollam 1989, p 44). Articles began emphasizing the global nature of the climate problem and the emissions of developing countries. They argued the U.S. electricity industry was only a small percentage of global emissions. For example, a 1988 EPRI article stated that: '…the United States cannot solve the greenhouse problem alone. It is a global issue…Of the U.S. contribution to CO_2 loading, about one quarter comes from electric utilities… U.S. and Western European fossil fuel CO_2 emissions have been fairly stable since the early 1970s, but emissions from the eastern bloc, China, the Pacific Rim, and developing nations are rising…' (EPRI 1988, pp 14–15). In fact, while U.S. CO_2 emissions in 1988 were only marginally higher than in the 1970s, emissions had been steadily increasing since the early 1980s, and continued to increase until 2007 (Ritchie *et al* 2020). By 1990 the American electricity sector was almost 7% of total global carbon pollution—a significant share (Global Carbon Project 2020, EPA 2021).

By the 1990s, climate science had established that climate change was real and human caused. During this decade, a divergence occurred between the two organizations: EPRI continued to communicate doubt throughout the decade, while EEI increasingly promoted delay (figure 3). As the research arm for the industry, EPRI articles discussed the science of climate change more than EEI articles, while EEI generally discussed policy implications, likely explaining this difference in the organizations' messaging. However, both organizations also each published a denial document, both arguing that climate impacts were not serious. An EEI article asserted that the data 'show cooler days, warmer nights, and better vegetables' (Michaels 1993, p 1), while an EPRI article stated that 'aggregate damages to the U.S. economy are likely to be substantially lower than previously estimated, with some sectors realizing net benefits' (Wilson and Pietka 1997).

In the mid-1990s, EEI also began advocating for voluntary action rather than binding policy (Draper 1994, EEI 1999). As the Kyoto Protocol negotiations unfolded, the industry argued that the U.S. should not reduce emissions if other countries continued to emit. EEI stated that targets in the Kyoto Protocol were 'unrealistic' (Novak 2001, p 68) because the renewable energy required by 'even the most modest climate treaty proposal' would leave the electricity sector unable to meet current U.S. energy demand (EEI 1997, p 78). Instead, EEI's stance at the turn of the century was that to '[stabilize] atmospheric concentrations of greenhouse gases cost-effectively over the long term…we should focus our near-term efforts on conducting an accelerated climate technology research, development, and deployment program' (Novak 2001, p 68). This push for R&D and voluntary initiatives has continued to the present, defining much of the industry's stance on climate action in the 2000s.

By the 2000s, EEI and EPRI no longer communicated doubt or denial; instead, both frequently argued to delay transitioning the electricity mix (figure 3). Language deflecting focus onto the emissions of other countries and sectors was still used in EPRI and EEI documents in the early 2000s, though less than in the prior two decades. Instead, after 2000, EEI and EPRI frequently presented carbon capture and storage (CCS) as the most promising solution to climate change, arguing that because 'half of U.S. electricity comes from coal combustion, any policy to reduce electricity's carbon footprint will rely on carbon capture and storage' (EPRI 2010, p 10). As such, these documents argued that climate action must focus on pursuing 'clean coal' via gasification and CCS. In our representative sample of EEI and EPRI documents from 2000–2019, 'clean coal' and CCS were discussed as much as all other carbon-free technologies combined (word count: CCS and integrated gasification combined cycle, or IGCC, $N = 658$; renewable, solar, wind, geothermal, and nuclear, $N = 654$). While most current electricity decarbonization scenarios include some form of CCS, the technology is predicted to account for less than 5% of total generation by 2040 (Larson *et al* 2020, IEA 2021, Williams *et al* 2021). Instead, these studies identify renewables, energy efficiency, and electrification as the primary solutions. Moreover, CCS has struggled technologically and financially: after more than 40 years of effort, CCS remains expensive (Jarratt and Coates 1984, Shepard 1986, Hannegan 2011, Abdulla *et al* 2020). Overall, 90% of the proposed power sector CCS capacity was never built (Abdulla *et al* 2021). As of 2021, there are no commercial-scale CCS facilities in the American power sector (Global CCS Institute 2021).

Only in the last few years have EEI and EPRI more consistently acknowledged the scientific consensus on climate change and the need to transition away from fossil fuels. After 2015, all EPRI and EEI documents in our sample communicated acknowledgement. That said, in 2017, the current CEO of Southern Company and then chairman of EEI stated in a television interview that he did not believe human activity was causing climate change. When asked, 'Do you think it is been proven that CO_2 is the primary climate control knob?', he replied 'No. Certainly not. Is climate change happening? Certainly. It is been happening for millennia…' (Belvedere 2017). This is climate denial.

4. Discussion and conclusion

In this paper, we have examined a cross section of the American electric utility industry's public messaging on climate change. While industry organizations knew about, and in some cases conducted research on, climate science as far back as the 1970s, until 2000 some utility organizations in this analysis cast doubt on climate change and founded, funded, and engaged in disinformation campaigns. Their actions were not limited to messaging alone: the utility industry spent over $500 million lobbying against renewable energy and climate policy over the past two decades (Brulle 2018, Mildenberger 2020, Stokes 2020).

After 2000, while EEI and EPRI no longer publicly doubted or denied climate change, these organizations continued to argue for delayed action. This rhetoric deflected focus onto other countries and sectors and uplifted approaches such as CCS that have proven unviable to date in the power sector, distracting attention from the energy transition. This shift from doubt to delay is the same pattern that was identified in ExxonMobil's communications (Supran and Oreskes 2021).

Yet, unlike fossil fuel companies, the electric utility industry does not have to continue to rely on fossil fuels to produce electricity. Technologies exist today to decarbonize much of the sector by 2035 (Phadke *et al* 2020). Coupling clean electricity with electrification of transportation, buildings, and industry has the potential to eliminate the majority of American carbon pollution, and has been shown to be a cost-effective pathway (Luderer *et al* 2022). This pathway would even prove profitable for the electric utility sector (Stokes 2020). Increasingly, the industry is realizing the opportunity in clean energy and electrification. For example, in 2018, the CEO of Southern California Edisons holding company wrote in EEI's *Electric Perspectives*: 'We need myriad resources and stakeholders to address climate change, but I believe electric companies are central figures. Only electric companies have the size and resources to implement clean energy initiatives on a significant scale' (Pizarro 2018, p 30). Furthermore, two of the ten utilities that we find were the most involved in climate denial, doubt and delay—NIPSCO and Consumers Energy—have significant plans to transition their dirty assets to clean resources this decade (Romankiewicz *et al* 2020, Stokes 2020).

However, others are continuing to delay. As of 2020, the 79 utilities that generated a majority of U.S. electricity from fossil fuels had only pledged to retire a quarter of their coal generation by 2030, while proposing over 36 GW of new gas plants. These same utilities had only pledged to replace 19% of their current fossil generation with renewable resources (Romankiewicz *et al* 2020). As a whole, the electric utility industry is moving too slowly on transitioning to clean energy. Of the ten utilities we identify as most involved in climate denial, doubt and delay, eight are delaying acting on clean energy: Southern Company, AEP, Ameren, Duke, APS, DTE, FirstEnergy, and Dominion (Romankiewicz *et al* 2020). These eight utilities remain heavily invested in dirty energy with few plans to transition to clean power. Similarly, Galli Robertson and Collins's (2019) found that Southern Company, AEP, and Duke—three of the utilities most involved in climate denial—are among the seven largest emitters in the industry, accounting for >25% of coal fired electricity generation emissions. Hence there is a tight correlation between those utilities that are maintaining fossil fuel assets today and those that have promoted climate denial, doubt, and delay.

Data availability statement

The data that support the findings of this study are openly available at the following URL/DOI: https://doi.org/10.7910/DVN/RVFTCP. Data will be available from 8 September 2022.

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Author contributions

E W: Conceptualization (equal), data curation (equal), formal analysis, investigation, methodology, project administration, software, validation, visualization, writing (lead); S B: Data curation (equal), formal analysis, investigation, validation, writing (supporting); E S: Data curation (equal), formal analysis, investigation, validation, writing (supporting); L S: Conceptualization (equal), funding acquisition, methodology, supervision, writing (lead)

ORCID iDs

Emily L Williams https://orcid.org/0000-0002-7261-3071
Leah C Stokes https://orcid.org/0000-0002-9919-8664

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EEI takes targeted strike at EPA's power plant emissions rule

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With grid reliability at stake, the association representing America's investor-owned electric companies on Wednesday formally challenged an Environmental Protection Agency (EPA) rule that sets new pollution limits on coal-fired power plants.

The Edison Electric Institute (EEI) filed a petition for review in federal court of the EPA's April 25 final Clean Air Act Section 111 rules, which aim to reduce greenhouse gas (GHG) emissions from existing power plants — which account for 25 percent of U.S. GHG pollution — and ensure that new combustion turbines are built to minimize emissions. The final rule goes into effect on July 8.

"Our action today is necessary to protect customers from regulations that rely on not-yet-demonstrated technology and unrealistic compliance timelines that risk undermining those goals," EEI President and CEO Dan Brouillette said in a statement issued May 22.

Specifically, the EPA's package of rules includes a final rule that directs existing coal-fired and new natural gas-fired power plants to reduce 90 percent of their greenhouse gas pollution by either 2032 or 2039.

The EPA also imposed three additional regulations on coal-burning power plants: stricter limits on their emissions of mercury; tighter restrictions on their seepage of toxic ash into water supplies; and reductions in their pollutants discharged through wastewater by more than 660 million pounds per year.

The EPA's limits on coal-fired power plant emissions will further strain the reliability of the nation's grid, according to Brouillette, and impact the generation sources that will be used to reliably power America's increasingly electricity-dependent economy.

EEI seeks judicial review of the agency's determination that carbon capture and storage (CCS) should be the basis for compliance with other portions of the 111 rules, said Brouillette.

"EPA's record and the docket do not support the agency's finding that CCS is adequately demonstrated for broad deployment across our industry," he said, pointing out that CCS is an emerging technology.

"EPA's implementation timelines do not align with the current reality," he added. "There is not a single coal- or natural gas-based power plant operating today that meets the CCS requirements set by EPA."

In fact, throughout the rulemaking process, EEI repeatedly raised concerns about CCS not yet being ready for full-scale, industry-wide deployment. "Nor is there sufficient time to permit, finance, and build the infrastructure needed for compliance by 2032," Brouillette said.

Other stakeholders agree, including the American Petroleum Institute (API) and the Electric Power Supply Association (EPSA), which represents America's competitive power suppliers.

EEI also filed a motion asking the U.S. Court of Appeals for the District of Columbia Circuit for permission to defend certain portions of the EPA's rule as an intervenor on the agency's behalf. Doing so would permit EEI to defend specific elements of the EPA's rule, according to Brouillette.

"We support EPA's authority to regulate greenhouse gas emissions under the Clean Air Act, as well as the agency's efforts to provide paths to additional carbon reductions and cleaner resources," he said. "We are intervening today to preserve our ability to defend, if needed, elements of the final 111 rules that are consistent with the ongoing clean energy transition and that do not create reliability impacts for customers."

At the same time, Brouillette said that electric companies across the country continue to invest in CCS and other 24/7 clean energy technologies. They also plan to actively deploy them when those technologies satisfy industry performance requirements and support reliability at costs that are affordable for customers, he said.

"We are committed to finding solutions, but we can't bet our energy future on a technology that is not yet ready for industry-wide deployment," said Brouillette. "We are working to meet the growing demands for electricity and to advance the nation's clean energy goals responsibly, without jeopardizing customer affordability and reliability."

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Coal and utility interests ask for, receive, bailouts to help failing power plants

By Matt Kasper
October 2, 2017

In keeping with Donald Trump's mission to bail out the coal industry, Department of Energy Secretary Rick Perry has asked the Federal Energy Regulatory Commission (FERC) to provide bailouts to power plants that no longer can compete with natural gas and renewable energy in the wholesale power market on the false basis that they will solve a grid resiliency crisis that does not exist. The proposal is intended to subsidize coal and nuclear plants, both of which are expensive and have been causing utility operators and coal mining companies to lose money.

'Trump Digs Coal' at Charleston Rally (CSPAN)

Perry has filed a proposed rulemaking that asks the federal regulators (two of which are Trump appointees, with an additional two more pending Senate approval) to approve of the rule in order to allow power market operators to establish a new tariff for power plants that have a 90-day fuel supply on site – a naked nod to coal and nuclear plants.

The requirement to have a 90-day fuel supply on site echoes what coal and utility interests advocated for while speaking at energy conferences last week.

Paul Bailey from the American Coalition for Clean Coal Electricity (ACCCE) spoke at the Southern States Energy Board conference in Charleston on September 26 and said:

"Depending on which coal plant it is, it has somewhere between a 70- and 80-day supply of coal sitting there on site. That is fuel security. You've heard DOE Secretary Perry talk about fuel security – that's fuel security right there …

"We think very strongly that the coal fleet is undervalued because – for a number of reasons, including that a large pile of coal sitting there on site, if you have a problem, that's a good insurance policy."

After the release of the proposed rule, Bailey applauded DOE and said, "We commend Secretary Perry for initiating a rulemaking by FERC that will finally value the on-site fuel security provided by the coal fleet. The coal fleet has large stockpiles of coal that help to ensure grid resilience and reliability."

ACCCE members include coal mining companies, railroad companies, along with electric cooperatives and two of the largest utility companies, American Electric Power and Southern Company.

West Virginia Coal Association President Bill Raney echoed similar remarks last week when speaking at the Annual Coal Marketing Days Conference on September 26 in Pittsburgh.

Raney led the discussion titled, "Washington's New View on Coal – Reversing Regulations in an Effort to Assist Fossil Fuel."

Raney told the audience that the future of the coal industry was "created on November 8th." He listed how the country has withdrawn from the Paris Climate Treaty, the regulations the administration has repealed, and that together with the DOE Report on Electricity Markets and Reliability he is seeing a "tremendous attitude change" and a "positive atmosphere" in Washington.

But in order to further level the playing field in the electricity market, Raney said he would also like to see more coal piled up outside of power plants:

"You can't see the gas lines. You can't see wind. You can't see solar. So maybe we need to talk about having a requirement for power plants in order to ensure reliability of at least having a 30 to 60 day supply of fuel on hand. That is very practical and significant."

Members of the West Virginia Coal Association include mining and railroad companies but also American Electric Power and FirstEnergy, which also released a statement that supported the rule upon its release.

Raney listed the many individuals that have been hired and nominated for positions within the Trump administration that are working to help the coal industry. He highlighted EPA Administrator Scott Pruitt, Secretary Ryan Zinke, and Secretary Rick Perry and again mentioned the grid reliability report.

Raney additionally listed Landon "Tucker" Davis as the coal policy advisor in the Department of Interior, Steve Winberg from CONSOL Energy and Doug Matheney from the Count on Coal

Initiative within the Energy Department, and Dave Zatezalo of Rhino Resources to run the Mine Safety and Health Administration.

Other individuals that Raney didn't highlight, but who also have connections with the utility and coal industry, include Brian McCormack (formerly of the Edison Electric Institute), David Banks (former lobbyist for Exelon), Mark Menezes (former lobbyist for Southern Company and other utilities), and Travis Fisher (formerly of the fossil fuel-funded Institute for Energy Research).

McCormack is a former executive at the Edison Electric Institute (EEI) and Perry's current chief of staff at DOE. Perry's proposal to FERC quotes from a recent pro-coal and pro-nuclear study funded by three trade associations, including EEI, as justification for the rule. The other trade associations behind the study are the U.S. Chamber of Commerce, with utility and nuclear companies on its board, and the Nuclear Energy Institute.

EEI's Philip Moeller – FERC's second-longest serving member, from 2006 through 2015. (Twitter)

After the release of the trade association-funded report, EEI Executive Vice President Phil Moeller, a former FERC Commissioner, said, "wholesale electricity markets should address price formation and the valuation of essential reliability services for customers." And after the release of the DOE proposed rule, EEI released a statement that was supportive of Perry's request.

David Banks, a former lobbyist for Exelon and now a special advisor to Trump, authored a report in 2014 that was critical of demand response, renewable energy, and natural gas in wholesale markets because "non-subsidized plants – including nuclear and coal units – are disadvantaged." He called for FERC to "adequately compensate assets that provide critical services to the grid and address the impact of subsidies on energy markets."

Exelon's CEO Chris Crane, vice chairman of the Edison Electric Institute and immediate past chairman of the Nuclear Energy Institute (CNBC)

Exelon's CEO Chris Crane called for a similar recommendation in an interview with UtilityDive earlier this year: "[Nuclear] provides more benefits than just megawatts … The resiliency, fuel diversity — it's important that is factored into price formation." Exelon also released a statement thanking Rick Perry for the proposal and highlighted the EEI, Chamber of Commerce, and NEI report as the rationale for FERC to finalize a rule.

The DOE proposal suggests that now-retired coal plants were crucial to the grid's operation during the polar vortex, a false accounting which elides the fact that coal stockpiles froze during the vortex, and wind energy, efficiency and demand response were instrumental to keeping the lights on then, as noted by the Natural Resources Defense Council.

The DOE proposal asks FERC to act within 60 days, but the federal regulators are under no obligation to act within that timeline.

TAGS: DEPARTMENT OF ENERGY | DONALD TRUMP | FEDERAL ENERGY REGULATORY COMMISSION | U.S. CHAMBER OF COMMERCE

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About the Authors

Matt Kasper

Matt Kasper is the Deputy Director at the Energy and Policy Institute. He focuses on defending policies that further the development of clean energy sources. He also focuses on the companies and their front groups that obstruct policy solutions to global warming. Before joining the Energy and Policy Institute in 2014, Matt was a research assistant at the Center for American Progress where he worked on various...

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DIVE BRIEF

FERC seeks fast track on DOE baseload compensation proposal

Published Oct. 2, 2017

By Gavin Bade
Senior Reporter

Dive Brief:

- The Federal Energy Regulatory Commission set tight deadlines for industry to file comments on a controversial market reform proposal from the Department of Energy, saying on Monday that initial comments are due on Oct. 23 and reply comments on Nov. 7.
- FERC's move came as a group of 11 energy trade associations filed a motion with the Federal Energy Regulatory Commission on Monday asking it to extend its consideration of major electricity market reforms beyond the 60-day timeframe requested by the Department of Energy. FERC could still grant extensions on its comment timetable.
- The group, including representatives from the solar, natural gas, wind, co-op and municipal utility industries, wrote the DOE failed to provide a reason for such a short consideration period in its rulemaking filing on Friday. "No emergency exists to justify such an action," they wrote.

Dive Insight:

Days after the Department of Energy proposed the most significant reforms to wholesale power markets in a generation, energy industry groups are taking sides.

On Sept. 29, DOE filed a Notice of Proposed Rulemaking at FERC asking the commission to provide cost recovery for power plants that keep a 90-day supply of fuel onsite. The proposal sparked outcry among other power interests who worry it could unravel competitive electricity markets.

Coal and nuclear interests moved quickly to praise the proposed rule. Exelon, the nation's largest nuclear generator, said it was "pleased" DOE moved to "ensure that attributes of nuclear generation are fully and appropriately valued."

But a larger contingent of power sector interests expressed dismay at the proposal. In a filing at FERC, a broad array of power sector interests argued that the DOE proposal offered no justification for its directive that FERC conclude its rulemaking on market reforms within 60 days.

"To the extent the [NOPR] implies that an emergency exists to justify the proposed interim final rule (although it provides no justification for this action whatsoever), publicly available information from the Department of Energy ("DOE") and North American Electric Reliability Corporation ("NERC"), as well as other experts, all demonstrate that no emergency exists that would justify such an action," they wrote.

That timeframe, the groups pointed out, would leave only 15 days for commissioners to consider the final rule after a 45-day comment period. The trade associations requested 90 days for initial comments on any proposed rule, as well as time for reply comments and the convening of a technical conference on the proposal.

"These reasonable steps would allow for meaningful public input from all stakeholders, including from energy market participants, grid operators and regulators and the power-consuming public," the groups wrote.

The association letter was signed by 11 groups: Advanced Energy Economy; the American Council On Renewable Energy; the American Petroleum Institute; the American Public Power Association; the American Wind Energy Association; the Electricity Consumers Resource Council; the Electric Power Supply Association; the Interstate Natural Gas Association of America; the National Rural Electric Cooperative Association; the Natural Gas Supply Association; and the Solar Energy Industries Association.

The Edison Electric Institute, the trade group for investor-owned utilities, did not sign onto the trade association letter. In a statement, EEI vice president of energy supply Richard McMahon said the NOPR shows DOE recognizes that "a balanced energy mix that includes 24/7 energy sources is vital to sustaining a secure, reliable, and resilient energy grid."

"New market rules should recognize the role that all generation sources play in maintaining the reliability and resiliency of the energy grid," he said.

FERC's deadlines released Monday could indicate that the commission intends to fast-track the proposal, but energy lawyers and former FERC commissioners told Utility Dive last week FERC is likely to extend its timeframe. The NOPR is likely too vague to form the basis of a final rule, they said, and FERC may have to start over with the proposal as "a prompt for comments" that would form the basis of final policy.

This post has been updated to include comments from the Edison Electric Institute.

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Home » Ohio's big utilities fight repeal of scandal-tainted bill riders that cost customers billions of dollars

ARTICLES UTILITIES

Ohio's big utilities fight repeal of scandal-tainted bill riders that cost customers billions of dollars

By Dave Anderson
March 24, 2025

AEP, AES, and Duke Energy oppose repealing coal plant bailout, which could cost Ohio utility ratepayers $1 billion by 2030

Utilities oppose ending Electric Security Plans that have cost Ohio utility ratepayers billions

Utilities also oppose ratepayer refunds for unlawful bill riders

Ratepayers could still see electricity bills rise under the new legislation

Ohio's largest utilities are opposing state legislation that could help rein in scandal-tainted electric bill riders that have cost their customers billions of dollars.

Executives from AEP, AES, Duke Energy, and FirstEnergy's Ohio utilities all provided testimony opposing the legislation, House Bill 15 and Senate Bill 2, multiple times in recent weeks to the energy committees of the Republican-controlled Ohio House and Senate. The state senate passed its version of the bill last week with unanimous support.

Philip Moeller, the Vice President of Business Operations and Regulatory Affairs for the Edison Electric Institute (EEI), also testified against the bills. EEI is the industry association for the nation's investor-owned electric utilities and is largely funded with money that member utilities collect from customers through their electricity bills. Moeller makes more than $1 million a year working for EEI, according to the group's latest available federal tax reports.

AEP, AES, and Duke Energy oppose repealing coal plant bailout, which could cost Ohio utility ratepayers $1 billion by 2030

AEP Ohio President Marc Reiter, Duke Energy Ohio President Amy Spiller, and AES Ohio General Counsel Christopher Holon and Senior Director of Regulatory & RTO Affairs Sharon Shroder all specifically opposed provisions of HB 15 and SB 2 that would end the ratepayer bailout of the coal-fired Clifty Creek and Kyger Creek power plants, a bailout that's cost Ohioans nearly $680 million over the past decade. The cost to ratepayers could rise to $1 billion by 2030, according to an analysis prepared for the Ohio Manufacturers' Association, which has long opposed the coal plant bailout.

The two coal plants are owned by the Ohio Valley Electric Corporation (OVEC). AEP, AES, and Duke are all shareholders in OVEC, with AEP owning the largest share with a nearly 40 percent ownership stake.

In 2019, state lawmakers extended the ratepayer bailout of the OVEC plants until 2030 through the bribery-tainted House Bill 6. AEP, AES, and Duke have collectively raked in nearly $450 million through the HB 6 coal plant subsidies since 2020 alone, according to the Ohio Consumers Counsel.

State lawmakers previously repealed HB 6's $1 billion ratepayer bailout of two nuclear power plants that were owned by a bankrupt subsidiary of FirstEnergy that became Energy Harbor, and was later acquired by Vistra Corp.

Ohio's former Republican House Speaker Larry Householder was sentenced to twenty years in federal prison for racketeering in 2023, after a trial that detailed how FirstEnergy secretly paid $60 million to make Householder speaker and secure the nuclear plant bailout via HB 6. Householder and FirstEnergy used 501(c)(4) nonprofit organizations, which are not required by the IRS to publicly disclose their donors, with names like Generation Now and Partners for Progress to conceal the flow of money.

FirstEnergy reached a deferred prosecution agreement with prosecutors that allowed the utility company, which was also charged with a federal crime, to avoid having its own criminal case go to trial. FirstEnergy agreed to pay a $230 million fine and cooperate with the ongoing federal investigation of utility corruption in Ohio.

AEP secretly funded Empowering Ohio's Economy, a 501(c)(4) that funneled $1.4 million into several 501(c)(4)s involved in the Householder case, including Generation Now, the Coalition for Growth & Opportunity, and Coalition for Term Limits. AEP, the largest beneficiary of HB 6's OVEC bailout, has not been charged with any crime, but did agree to pay a $19 million penalty to settle a related investigation by the Securities and Enforcement Commission.

In his testimony last month opposing HB 15, Reiter described the OVEC coal plants as "essential" to power grid reliability.

"This is especially important during times of extreme weather conditions which our state is experiencing frequently," Reiter testified.

Coal-fired power plants are a major source of carbon dioxide pollution that's driving harmful climate change and fueling extreme weather that threatens the grid. The OCC estimates that the OVEC plants emitted nearly 60 million tons of CO_2 into the atmosphere just since 2020.

The Clifty Creek coal plant is located in Indiana, not Ohio. Fuel receipt data available from the U.S. Energy Information Administration shows most of the coal purchased for the OVEC plants last year was imported from mines in Kentucky and West Virginia owned by Alliance Resource Partners. The coal company's CEO Joseph Craft is a major GOP fundraiser, and worked with FirstEnergy on a failed effort to secure a federal bailout for coal-fired power plants during President Trump's first term.

The Ohio Coal Association provided testimony in support of maintaining the OVEC coal plant bailout. Randy Eminger of the coal industry-backed Energy Policy Network also testified and recommended steps Ohio could take to avoid further coal plant closures, including requiring that any new renewable energy generation in Ohio be backed up by "dispatchable" power (i.e. coal or natural gas).

Eminger and the Energy Policy Network previously joined with Craft's coal company to form the Indiana Coalition for Affordable and Reliable Electricity, or ICARE, a front group that fought the Indiana utility NIPSCO's plans to retire its coal plants and invest in new wind power.

Utilities oppose ending Electric Security Plans that have cost Ohio utility ratepayers billions

The utilities and EEI also took issue with provisions of the new legislation eliminating Electric Security Plans (ESPs) that were created as part of a 2008 Ohio energy law. ESPs have enabled AEP, AES, Duke and FirstEnergy to rake in $3.7 billion from Ohio ratepayers since then through bill riders, according to the OCC. AEP, AES, and Duke used their ESPs to charge customers to bail out the OVEC coal plants before HB 6 became Ohio law in 2019, the OCC told state lawmakers last year.

FirstEnergy greased the wheels for the Public Utilities Commission of Ohio's approval of its Electricity Security Plan IV through a secret side deal with large energy users flagged by state and federal prosecutors in the indictments of former FirstEnergy CEO Charles E. Jones and lobbyist Mike Dowling. The side deal is also now under investigation by the PUCO.

The federal criminal investigation found FirstEnergy secretly paid $22 million between 2010 and 2019 to Samuel Randazzo, at the time a prominent energy attorney and lobbyist who represented the Industrial Energy Users-Ohio and anti-wind power interests in Ohio. In 2015, FirstEnergy secretly agreed to increase Randazzo's consulting payments in exchange for getting IEU-Ohio to drop its opposition to the utility's ESP IV before the PUCO.

FirstEnergy's final $4.3 million consulting payment to Randazzo, made just before his appointment as PUCO chairman by Governor Mike DeWine in early 2019, was later deemed a bribe by prosecutors. Randazzo was indicted on state and federal criminal charges, but died by suicide last year.

The latest version of HB 15 would also bar utilities from using cash payments to induce parties to enter into a settlement of a PUCO matter, and from entering into any secret arrangement or financial or private agreement with a party to a settlement that's not disclosed publicly.

Utilities also oppose ratepayer refunds for unlawful bill riders

All four of the utilities took particular issue with parts of HB 15 and SB 2 that would close a longstanding loophole in Ohio law that since 2009 has allowed AEP, AES, and FirstEnergy to avoid refunding $1.5 billion via bill riders and charges collected from ratepayers that were later found to be unlawful by the Ohio Supreme Court, according to the OCC.

"I commend the legislature for finally addressing this issue as it is long overdue and I strongly urge the passage of this provision to prevent the travesty that the current situation has caused," Janine Midgen Ostrander, the former Consumers' Counsel for the State of Ohio and now a fellow Fellow at Pace University Law School, Energy and Climate Center, said in testimony before the Ohio Senate Energy Committee last week.

Just one of those unlawful riders cost customers of FirstEnergy's Ohio utilities $460 million. A PUCO audit could not rule out that FirstEnergy may have used some of the ratepayer money it collected through the same Distribution Modernization Rider to pay for bribes.

AEP has avoided having to refund approximately $525 million to ratepayers who paid for ESP riders that were found to be illegal, based on the OCC's tally. AES customers have missed out on nearly $550 million in refunds due to the loophole.

Ratepayers could still see electricity bills rise under the new legislation

The utilities are asking state lawmakers to make fundamental changes to the laws governing utility ratemaking in Ohio, as a tradeoff for the reforms included in HB 15 and SB 2.

As currently written, both bills allow electric utilities to choose to "reasonably forecast" – or estimate – the base rates to be paid by customers, rather than basing rates on actual documented operating costs from recent years.

"We also appreciate that S.B. 2 includes provisions that would support improvements to utility transmission and distribution service, including the use of fully forecasted future test years in base rate cases…" FirstEnergy Ohio President Torrence Hinton told the Ohio Senate Energy Committee last month.

"Allowing the electric utilities to use a fully forecasted test period for setting rates and trackers… is probably the most draconian provision of this legislation," the OCC said last year of an earlier bill that contained similar language. "It undermines the very foundation of public utility regulation in Ohio by taking away consumer protections currently written into the law."

"While this bill addresses many key energy policy components, it is important to not overturn decades of ratemaking law that has stood the test of time and provided important protections to customers," the Ohio Manufacturers' Association said in testimony earlier this month on SB 2. "For example, authorizing the electric utilities to forecast their test years in rate cases will encourage higher projected costs and lower projected revenues, leading to an increase in customers' bills."

The Ohio House Energy Committee is expected to vote on HB 15 as soon as Wednesday.

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About the Authors

Dave Anderson

Dave Anderson is the policy and communications manager for the Energy and Policy Institute. Dave has been working at the nexus of clean energy and public policy since 2008. Prior to joining the Energy and Policy Institute, he was an outreach coordinator for the climate and energy program at the Union of Concerned Scientists. He is also an alumnus of the Sierra Club and the Alliance for Climate Protection...

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Edison Electric INSTITUTE

American Gas Association

Via E-Mail (rule-comments@sec.gov)

June 17, 2022

Vanessa A. Countryman, Esq.
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: The Enhancement and Standardization of Climate-Related Disclosure for Investors, Release Nos. 33-11042 and 34-94478; File No. S7-10-22

Dear Ms. Countryman:

Thank you for the opportunity to provide comments on the proposed rules. We applaud and support the ongoing efforts of the U.S. Securities and Exchange Commission (Commission or SEC) to enhance and standardize climate-related disclosures. This comment letter is being filed jointly by the Edison Electric Institute (EEI) and the American Gas Association (AGA).

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies as International Members, and hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. Our industry input is based on our extensive experience in making climate-related disclosures under many of the existing reporting regimes.

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 73 million customers — receive their gas from AGA members. Today, natural gas meets more than one-third of the United States' energy needs.

The electric and gas utility sector is the most capital-intensive industry in the United States. Our members raised and invested more than $140 billion in capital expenditures in 2021 and more than $1 trillion over the past decade to make the gas and electric energy grids smarter, cleaner, more dynamic, more flexible, and more secure; to diversify the nation’s energy mix; and to integrate new technologies that benefit both customers and the environment. Consequently, access to efficient and transparent capital markets, and ensuring that investors have the information that they need to make capital allocation decisions, are vitally important to EEI, AGA and our members. Through this investment our industry is leading the transition to the lower carbon energy economy while preserving access to affordable and reliable energy.

Across the nation, our members are leading a clean energy transformation, making significant progress to reduce greenhouse gas (GHG) emissions in our sector, while providing the backbone of the energy infrastructure of the U.S. economy, creating good-paying jobs and an equitable clean energy future.

Actions to address climate change and thereby climate-related reporting are of high importance to our investors, which is why EEI and AGA members already provide significant climate-related information to investors and are industry leaders in voluntary disclosure through our industry-pioneered, first-of-its-kind, sector-wide ESG reporting template developed with and for investors more than five years ago.

EEI and AGA recognize that the hallmark principle of U.S. securities laws is transparency that provides investors with information that is usable, consistent and comparable across registrants so that investors can make informed investment decisions. Consistent with this principle, EEI and AGA and our members support several key elements of the climate-related disclosure approach contemplated by the Commission's proposal.

However, it is vital that the Commission implement rules that are useful and informative and recognize the inherent difficulty of obtaining accurate and timely material climate-related information, particularly with respect to indirect GHG emissions across a registrant's entire value chain, and the resulting lack of comparability that these limitations necessarily produce.

Furthermore, climate disclosure requirements should provide investors with a useful, and cost-effective, level of detail that balances the value to investors of any additional information that is required to be reported with the cost of developing, gathering, validating, and reporting that information, as well as the cost of attestation. These principles underpin existing SEC disclosure regimes for other types of disclosures. The final rule should adhere to these time-tested disclosure principles and not place a higher compliance burden and risk on those registrants that are currently providing the most climate-related disclosure to investors.

Executive Summary

We commend and support the Commission's efforts to enhance and standardize climate-related disclosures. As leaders in voluntary ESG climate reporting, EEI and AGA welcome the Commission's proposal as an important step forward in ensuring more complete GHG disclosure across all industries. We believe, however, that some of the most burdensome aspects of the incremental disclosure would not produce benefits that outweigh the costs and, in some cases, would lead to investor confusion by requiring the disclosure of overwhelmingly voluminous, immaterial information.

We recommend the following changes to the proposed rule:

- The Commission should not require inclusion of Scope 3 emissions disclosures. If the Commission decides to require Scope 3 emissions disclosures, such disclosures should be required only to the extent that a registrant has set a Scope 3 emissions goal or target, and any such requirement should include, at a minimum, clearly defined boundaries on the information required to be disclosed, including reasonable boundaries on the extent of the value chain that would be relevant for purposes of Scope 3 calculations and disclosures. Registrants should be allowed to provide such information as "furnished" not "filed."
- The requirement for audited footnotes containing "financial impact metrics" should be removed. Such information does not need to be included in an audited footnote to be valid and reliable. It is reasonable to ask registrants to provide unaudited, good-faith estimates of the aggregated information called for by proposed Item 14-02 of Regulation S-X using a traditional measurement of materiality instead of an arbitrary numeric threshold. Furthermore, terms such as "transition activities," "severe weather events," and "other natural conditions" need to be precisely defined.
- The requirement for an attestation report covering Scope 1 and Scope 2 emissions is not necessary to assure reliability and would add unnecessary costs. The Commission should rely on the reporting standards under existing federal and state regulatory frameworks, such as the EPA's GHG Mandatory Reporting Rule and other already-existing reporting regimes. Also, instead of requiring attestation, the rule should rely upon the commitment of registrants to provide accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws and the other already-existing reporting regimes.
- The Commission should exempt from the final rule any registrants that are consolidated subsidiaries of a parent registrant where the parent registrant's climate-related disclosures encompass the consolidated subsidiaries. The Commission should not require a registrant to include disclosures of its share of unconsolidated affiliates and those over which it does not exercise control.
- The Commission is asking for an unprecedented level of disclosure; the liability exposure needs to be adjusted to encourage good-faith disclosures of the unique information it would require. In order to further the Commission's intent to increase the amount of climate-related information that is disclosed, there should be no increased risk exposure for disclosure made in good faith.
- The Commission should include in the final rule an express Foreign Private Issuer (FPI) exemption. Such an exemption would allow a FPI to defer to its home country climate-change reporting protocols in its Annual Report and Accounts (ARA) in lieu of complying with the Commission's proposed rule.
- Disclosures about governance matters should be located in the proxy statement, where other corporate governance-related information currently is already disclosed extensively. The Commission also should clarify the meaning of "expertise regarding climate-related risks" for oversight and governance of climate-related risk, as well as allow for flexibility

given the wide range of backgrounds and qualifications of individuals with climate expertise.
- The Commission should delay implementation until two fiscal years after publication of the final rule.

We believe that with these changes the new disclosure requirements would much better balance the costs and burdens imposed on registrants with investor needs, and would provide investors with more reliable, comparable, and useful climate-related information that is material for making informed investment decisions. Moreover, these changes would address the aspects of the proposed rule that appear more burdensome for registrants that currently provide the most climate-related disclosures to investors by linking disclosure requirements to registrants' progress in setting goals to address climate change. For instance, EEI and AGA members already provide significant climate-related data to investors and are industry leaders in voluntary disclosure and climate commitments.

The SEC Proposal is an Important Step Forward on GHG Disclosure

EEI and AGA welcome the Commission's proposal as an important step in ensuring more complete GHG disclosure across all industries. EEI and AGA members have been leaders in GHG and other ESG disclosures, as exemplified by our development more than five years ago of the first-ever ESG reporting template for electric and gas companies. The EEI-AGA template provides a standard for members to report generation and emissions information and describe their GHG reduction goals and strategies. We pioneered this template working with investors to help ensure it provides them with the appropriate level and type of ESG and GHG information they need for decision-making. Investors, along with other stakeholders such as the Task Force on Climate-Related Financial Disclosures (TCFD)[1], have praised the template as an example of how to translate TCFD guidance into a practical ESG report that provides the information investors need to assess climate risk in their investment decision-making.

One of the hallmarks of success of our template has been keeping it limited to information investors tell us is critical for their decision making. The Commission's proposal can similarly be a bellwether in climate disclosure, but to do so it is important to keep the information reported relevant to investors and germane for decision-making. We offer some suggestions below on how to ensure that the final rule requires an appropriate level of disclosure, based in part on our experiences with our template and ESG reporting.

[1] For more information, see: https://www.fsb-tcfd.org/

Required Reporting of Scope 3 Emissions

Scope 3 Emissions – Introduction

As noted in greater detail below, Scope 3 emissions are difficult to quantify and generally require estimates of a type unlike the detailed confirmable information that investors generally rely on. Nonetheless, as the GHG Protocol—on which the TCFD framework is modeled—notes, reporting of some Scope 3 emissions can help identify potential risks and spheres of influence that may be of value to investors even if the emissions data is not perfectly accurate. However, inclusion of such data, if required, should be carefully bounded to the relevant extent of the registrant's value chain, especially given the inherent uncertainties of Scope 3 emissions data. In addition, registrants should be able to include this information as "furnished" rather than as "filed," which would appropriately limit potential exposure for including in good faith what may be less than fully certain, but potentially helpful, information.

The Commission Should Reconsider the Proposed Requirement to Report Scope 3 Emissions

Most of our members currently report Scope 1 emissions, and most of our electric utility members also currently report Scope 2 emissions from purchased electricity and energy.[2] All of our members are committed to making important climate-related disclosure to their investors, and we acknowledge that some companies (including both electric and natural gas utilities) may choose to report certain categories of Scope 3 emissions in other places.

However, we believe the Commission goes too far in this proposal by requiring the inclusion of Scope 3 emissions in registrants' filings. We urge the Commission not to include any requirement to report Scope 3 emissions. The GHG Protocol states that Scope 3 is an "optional reporting category" (Page 25, Corporate Standard | Greenhouse Gas Protocol (ghgprotocol.org)) and that "[s]ince companies have discretion over which categories they choose to report, Scope 3 may not lend itself well to comparisons across companies."

Further, Scope 3 emissions data can only be an estimate based on available emissions reporting methodologies and capabilities. Although a variety of estimates are included within the Form 10-K, the estimates necessary in Scope 3 emissions reporting are inherently different, including a higher level of estimation uncertainty that results from (i) methodologies that are not consistent or well-developed/mature; (ii) key input data to the estimate that may not be considered reliable; and (iii) numerous, often unobservable/unverifiable assumptions and judgments necessary to the estimation. As a result, the corresponding output/estimate is highly sensitive to slight variations in these assumptions. Therefore, the estimated Scope 3 emissions disclosures likely will not be comparable, meaningful, or decision-useful to investors and other financial statement users.

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[2] Scope 2 emissions are typically not material for gas utilities, as they purchase only insignificant quantities of electricity. Whereas a wires-only electric utility that sells the power it delivers to customers would purchase all the electricity they provide to customers from independent power generators.

If Scope 3 Emissions are Required to Be Reported, There Should Be Boundaries on the Information to Be Included and the Disclosures Should be Furnished Rather Than Filed

As the GHG Protocol[3]—on which the proposed disclosure requirements are modeled—notes, reporting of some Scope 3 emissions can help identify potential risks and spheres of influence that may be of some value to investors even if the emissions data is not perfectly accurate. However, inclusion of such data, if required, should be carefully bounded given the inherent uncertainties of Scope 3 emissions data and the interrelated nature of today's upstream and downstream supply chains.

Accordingly, should the Commission decide to require Scope 3 emissions disclosures, it should provide specific guidance on which Scope 3 emissions should be included, and to what extent, in order to ensure that the resulting disclosure is as useful as possible for investors. While reporting on certain categories of Scope 3 emissions could provide some helpful general information, such emissions are very difficult to quantify accurately across a registrant's entire value chain and are unlikely to be comparable between entities due to the large amount of estimation required. Therefore, any requirement for Scope 3 emissions reporting would need to be bounded by clear parameters in order to be useful and should be furnished (rather than filed) to limit registrant liability appropriately, given the inherent limitations on the completeness and reliability of the underlying data. We address this in more detail below.

The GHG Protocol clearly contemplates a value chain that goes beyond initial customers, but it does not specify the relevant extent of the value chain for such calculations and disclosures to be useful for investors. For instance, when a utility sells electricity or natural gas to a factory, does the value chain stop at the factory, or does it continue further downstream to the users of the products manufactured at the factory?[4] Without logical boundaries tied to registrant's line of business and span of control, accurate and consistent estimation of Scope 3 emissions becomes extremely difficult, if not impossible, and would result in a significant cost and resource burden on companies as well as an overwhelming amount of data and irrelevant information for investors to sift through.

To address these concerns, if it is determined Scope 3 is to be included, it would be reasonable to limit the "value chain" for Scope 3 reporting to the immediate suppliers to, and immediate

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[3] The GHG Protocol was originally convened in 1998 by the World Business Council on Sustainable Development (WBCSD) and the World Resources Institute (WRI). For more information, see: https://ghgprotocol.org/about-wri-wbcsd

[4] For example, if a utility provides electricity to a factory that manufactures trucks, are the emissions from those trucks included within the utility's Scope 3 emissions? What about the emissions from the products transported by those trucks? What about emissions from the ultimate use of those products? To provide reasonably estimable, usable and relevant information for investors, none of these GHG emissions should be attributable to the utility as they are far beyond the utility's line of business and span of control. Without such boundaries, the Scope 3 emissions required to be reported from the utility sector could be much of the U.S. economy's emissions. This fact would only reveal that electricity and natural gas are critical to the U.S. economy, but would reveal little of use to an investor when comparing utilities.

customers of, a registrant.[5] In addition, while the proposed rule currently would require a registrant to calculate and disclose all Scope 3 emissions (1) if they are "material" or (2) if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions, it would be appropriate that such requirement be narrowed to the second prong only. As the Commission's discussion and request for comments on what should be the proper measure of "material" for Scope 3 emissions highlights, whether and to what extent Scope 3 emissions are "material" to an individual registrant can be difficult to evaluate and determine on a consistent basis across various registrant types, particularly given the lack of guidance on appropriate boundaries within the value chain. Limiting the requirement for Scope 3 emissions estimates to the extent to which the individual registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions would provide a much clearer trigger and boundaries around reportable Scope 3 emissions estimates. Such estimates would then be based on the extent to which management has determined that Scope 3 emissions are relevant and significant for the registrant's industry and operations, as well investor input on the need for Scope 3 emissions reduction targets.

The proposal also appears to require registrants who have set goals for any of the 15 categories of Scope 3 emissions to report all categories of Scope 3 emissions. However, companies that have set goals for certain Scope 3 emissions have, by definition, determined that the categories for which goals have been set are the most important and that the remainder likely are not material. Within the 15 categories, less than one-half are directly applicable to the utility and energy industries. There are a few categories of Scope 3 applicable to the utility and energy industries where data is readily available, but even here some companies may define these differently. Requiring registrants to report all categories of Scope 3 emissions would almost always require them to report immaterial information. If the Commission does not choose to (1) remove the requirement to report Scope 3 emissions or (2) limit any required Scope 3 emission disclosures as recommended, there should be an opportunity for a registrant to explain which of the 15 categories are relevant and material to their business while omitting other categories from its reports.

In addition, in light of the speculative nature of their estimation, if Scope 3 emissions disclosures are required, registrants should be able to include this information as "furnished" rather than "filed," which would limit their potential exposure for including information of this nature and help address the numerous assumptions, uncertainties and estimates necessarily used to calculate Scope 3 emissions. We discuss these concerns in detail below.

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[5] For example, for an electric transmission and distribution ("T&D") utility that does not own generation but rather purchases power on the wholesale market and then distributes it to customers, Scope 3 GHG emissions would be calculated based on the aggregated GHG emissions from fossil fuel combustion for electric generation and the aggregated total number of kilowatt hours used by customers. This would not include, for example, the GHG emissions from the production and transportation of the fossil fuel used to generate the electricity nor the GHG emissions from the sale and use of a utility customer's end-products sold to third-parties. As set forth in the GHG Protocol framework, line losses on the T&D system from delivering the electricity the utility purchased would be reflected in the T&D utility's Scope 2 GHG emissions estimate. Together, this level of information would fairly represent and provide useful and comparable information to investors about a T&D company's position in the value chain.

Scope 3 Emissions Are Inherently Difficult to Quantify with a High Degree of Accuracy or Reliability

A key principle of financial disclosure is that the information provided must be objectively quantifiable and reliable. Scope 3 emissions are challenging to quantify with a meaningful degree of certainty since they depend on broad estimates or information supplied by third parties. This largely is because Scope 3 emissions include emissions of both upstream and downstream participants, which include individuals and both privately and publicly held companies in a registrant's "value chain" – entities over which a registrant has little, if any, control and into which a registrant may have little, if any, visibility. Even for upstream participants, such as a registrant's primary vendors, it is difficult to compel the provision of the requested metrics and to assess or influence their accuracy.

In the case of natural gas supply, only a small proportion of the natural gas obtained by gas and electric utilities is purchased through bilateral contracts where the upstream supplier is known and can be individually identified. Most of the supply is obtained from gas markets[6] where the suppliers cannot be individually identified, and therefore the actual sourcing of that gas and the emissions associated with it are not measurable. The GHG Protocol does not provide guidance on accounting for these upstream gas emissions.

Obtaining reliable emissions metrics from downstream participants (including millions of customers) is almost impossible for many industries, particularly utilities, since emissions from customers are neither uniform nor consistently predictable. For example, when a utility provides natural gas to a factory, it may not know the extent to which the factory will use the natural gas as a feedstock to manufacture products that will sequester rather than release carbon or methane – rather than as a fuel. The gas utility also would not know the type of fuel combustion equipment to be used at a factory or commercial facility and thus would have no insight into the resulting emissions.

Overall, the lack of consistent information on Scope 3 emissions in a registrant's value chain assures that the reported metrics will be dependent upon broad estimates rather than those characterized by the precision, rigor, and reliability that users of SEC-filed information expect. Even among our members who have attempted to quantify and disclose Scope 3 emissions, there is lack of consensus as to how to do so and whether such information is sufficiently reliable and comparable, which we discuss further below. Given the fact that Scope 3 emissions metrics are largely based upon such estimates, significant additional disclosure would be necessary in order for a financial statement user to genuinely understand the nature of the estimate and corresponding estimation uncertainty.

[6] Although electric distribution utilities may generate their own electricity or purchase some of it from known sources, at least some portion is acquired from similar wholesale markets where suppliers cannot be identified individually.

The Scope 3 Information Reported will not be Comparable

Companies in similar businesses with comparable Scope 1 and Scope 2 emissions likely will report significantly different Scope 3 metrics depending upon the methodology and assumptions used by each[7]. Substantially all Scope 3 emissions reporting will be based upon estimates, and those estimates will vary widely depending upon broad factors such as the differences in the mix of upstream and downstream participants, the amount of emissions information, if any, provided directly by members of the value chain, the amount of emissions information, if any, more broadly made public (for example in EPA filings, Carbon Disclosure Project and Global Reporting Initiative reports, and otherwise), and the capacity of registrants to absorb and analyze the available information.[8]

Our members' Scope 3 emissions, and their climate performance more generally, reflect their unique facts and circumstances, including weather and energy efficiency programs, as well as each registrant's strategy with respect to decarbonization, safety, reliability, resiliency, and affordability. Further, the quality of information available from those in our members' supply chain could vary substantially and may not be subject to the same rigor as our members apply in developing their own disclosures. These differences further reduce the comparability of Scope 3 emissions data. All of this argues for additional guidance and boundaries from the Commission if Scope 3 emissions must be included, allowing the information to be "furnished" rather than "filed," and requiring information around the uncertainty of the accuracy of Scope 3 emissions estimates so that investors can determine the level of confidence to assign to such data.

Inclusion of Scope 3 Emissions Will Result in Double Counting of Emissions

The nature of Scope 3 emissions and the absence of clear boundaries for most registrants' value chains will result in the same emissions being reported by multiple registrants. One concern among our members is double-counting among gas producers, pipelines, and utilities. For example, an electric utility that uses natural gas to generate electricity will be in the same value chain as the producer that produced and supplied that natural gas and the pipeline that transported that natural gas to the utility's plant, with each possibly reporting the emissions of the other within its Scope 3 metrics[9]. Double-counting also can occur for a single registrant that is a gas and electric supply utility that both supplies the natural gas to a third-party generating facility and then purchases that electricity (whether directly or on the wholesale market) for distribution to electric customers. These additional considerations further illustrate that the Commission should establish clear value chain boundaries that address and eliminate these potential cases of double-counting if reporting of Scope 3 emissions is required.

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[7] Although the methodology used will be disclosed, it is unlikely that it will be disclosed at the level of detail that would enable reconciliation among different registrants.
[8] It also is noteworthy that the estimating approaches used by registrants likely will be based upon analysis of earlier data (*i.e.*, data from a year or two prior to the current year being reported upon) and therefore may no longer be entirely accurate at their time of use.
[9] The utility's customers – and possibly others – also would be within the same value chain, resulting in even further duplication of the reporting of the same emissions.

Summary of Recommendations Regarding Scope 3 Emissions Reporting

The Commission should not require inclusion of Scope 3 emissions disclosures. The framework for Scope 3 emissions estimations and disclosure has not yet matured to the point that registrants can provide the proposed disclosure with a level of consistency and accuracy on par with what the Commission requires generally.

If the Commission nevertheless decides to require Scope 3 emissions disclosures, the disclosure requirement should include, at a minimum, clearly defined boundaries on the information to be disclosed. Without clear bounding, the resulting disclosures will be neither comparable nor reliable. It is reasonable to limit the "value chain" for any Scope 3 emissions disclosure requirement to the immediate suppliers to, and immediate customers of, a registrant directly related to the registrant's core business as described in its business description. Quantitative disclosures of GHG emissions should be required prospectively only, for reasons explained in our comments on the implementation date later in this letter.

In addition, any Scope 3 emission information should be considered "furnished" rather than "filed." Registrants should not be required to "file" data that would be so largely dependent on estimations and assumptions that may be inconsistent across companies. Additionally, registrants should be afforded a "reasonable efforts" standard for Scope 3 emissions data collection similar to the "reasonable country of origin" standard used to determine countries of origin in the Commission's conflict minerals disclosure rules.

Audited Footnote Requirement

An audited footnote containing "financial impact metrics" should not be required. The preparation and inclusion of the proposed information in an audited footnote will be challenging and costly to implement, including the accounting and other changes necessary to produce the required information and the significant audit cost due to the volume of information that would be included, the unworkable disclosure threshold, the impacts on internal controls, and the lack of criteria that can be applied objectively and consistently. Further, the incremental benefit of including these requirements, compared with an alternative presentation of the information most relevant to the proposed rule's purpose, as discussed below, is unclear.

Overwhelming Volume of Information

As a threshold matter, the information related to the eight disclosure items contained in proposed Item 14-02, particularly the information related to severe weather events, other natural conditions, and transition activities, could be interpreted to affect a substantial number of the line items in the financial statements of a utility.

To take a simple example, consider the impact of a substantial hurricane that reaches an electric utility's service territory:

- Of a utility's typical 17 income statement line items, 11 likely would be impacted by 1% or more.
- Of a utility's typical 41 statement of cash flow line items, 15 likely would be impacted by 1% or more.
- Of a utility's typical 49 balance sheet line items, 3 likely would be impacted by 1% or more[10].

There are substantial hurricanes every year, so, focusing just on hurricanes as an illustrative example, the proposed rule could, depending upon the location of the utility, require the footnote disclosure to include financial impact metrics and context information for each year presented for each of the line items referenced above, potentially resulting in a footnote several times larger than the actual financial statements themselves given how much information would be needed with respect to each line item.

While the example above relates to hurricanes, the impact of other severe weather events—such as tornadoes, floods, wildfires, heat waves and unusual freeze conditions—similarly would impact numerous line items as well. And the required disclosure relating to severe weather events is only one of the eight required disclosure topics under proposed Item 14-02.

The information at this level of detail would not be beneficial to investors, as most of it would be immaterial and, given how unique each utility is[11], would lack any meaningful comparability to similar information provided by other registrants. Investors currently get information today that is meaningful in this arena through the existing requirements in Regulations S-K and S-X, e.g., requirements for Management's Discussion and Analysis (MD&A) discussion of significant items within the year, and, to the extent severe weather impacts are relevant/material, those are discussed there.

Any nominal benefits from the proposed disclosure would be far outweighed by the cost of preparation for registrants and increased burden on investors to interpret voluminous data. Furthermore, the unintended consequence of this rule would be that so much immaterial information would be added to the audited financials that investors will not be able to differentiate material from immaterial information in assessing the financial status of the registrant.

Our experience in working with investors and other stakeholders in developing the EEI/AGA ESG/Sustainability Template is that investors seek brevity and clarity in the disclosure of

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[10] These numbers are based upon a sampling of Atlantic-coast and Gulf-coast fronting utilities and do not include sub-total (and total) lines items and capital-related line items.

[11] Substantially all of the SEC-registered utilities with electric operations are members of EEI, and substantially all of the SEC-registered utilities with natural gas operations are members of AGA. Each has a different geographic territory with different populations, climates, natural resources, customer demand, state regulatory regimes, history, and existing facilities. Comparability is limited.

material information. They are unlikely to benefit from a voluminous report; instead, they want concise, comparable, and consistent disclosures. The success of our template reflects our industry's responsiveness to this input, and we recommend a similar approach here.

The 1% Threshold Is Not Consistent With Most Definitions of Materiality

A 1% threshold for disclosure on a line-item by line-item basis would change the traditional definition of materiality. The approach embodied in proposed Item 14-02 is inconsistent with the Commission's long-standing approach to materiality, as reflected in its pronouncements—such as SAB 99—its disclosure rules generally, and its enforcement efforts, as well as that endorsed by the Supreme Court in *TSC vs. Northway* and *Basic vs. Levinson*. Disclosure of a large volume of immaterial information harms, rather than helps, investor decisions by creating information overload that obscures truly material items.

The 1% threshold contained in Item 14-02(b) requires that components within each line item be aggregated to determine whether the "positive impacts" and "negative impacts" exceed 1% of the total line item. It is rare that components that comprise as little as 1% of a financial statement line item will be material. Moreover, given the wide range of size for different line items, one percent of even the largest line item still may not be material, and one percent of smaller line items likely are meaninglessly insignificant amounts.

The 1% threshold is immaterial and arbitrary and would impose undue costs and burdens on public companies. While we do not subscribe to there being a single numeric threshold for materiality, there clearly is a level below which items simply are not material to investors. One percent has not been the threshold for quantitative financial statement line-item materiality, especially since any particular line item itself might not be material for a given registrant. This prescriptive approach is also inconsistent with the principles-based TCFD reporting framework, which was cited by the Commission as one of the frameworks used to develop the proposed rule.

Moreover, registrants would have extreme difficulty implementing the aggregation requirement underlying the proposed 1% threshold. There is no minimum amount with respect to the individual components that would have to be aggregated, meaning that even the smallest underlying components would have to be identified as being attendant to positive or negative impacts and, as a practical matter so that the disclosure can be meaningful, further identified in a manner so that they can be aggregated with similar underlying items. For even a modest-sized utility, this would require that these identifications be performed for millions of individual items every year.

Further, utilities do not have a chart of accounts that is designed to make these differentiations, nor have they ever been expected or required to do so for items that are clearly immaterial. The same is likely true of virtually all registrants. In addition, many utilities do not have systems at a central office, at warehouses, at dispatch centers, for line crews, or otherwise that currently enable them to identify a particular piece of equipment or service as being attributable to a "severe weather event" or a "transition activity." A system that would enable that level of tracking would be extremely costly to implement and maintain, and it would be several years, at best, before it could reliably produce auditable results. Additionally, such a system would include a number of estimates and assumptions that would pose significant liability concerns and audit challenges.

If the footnote requirement is contained in the final rule, the 1% threshold should be replaced with a traditional materiality concept that is based on financial statement materiality as opposed to focusing on individual line items. Given the difficulty of a one-size-fits-all definition of materiality, the traditional *TSC vs. Northway* and *Basic vs. Levinson* approach should be used. This approach has passed the test of time and provides the needed flexibility while ensuring that investors receive relevant information.

Internal Controls

Utilities, like all other registrants, are required to maintain a system of internal controls designed to provide reasonable assurance that the information in their financial statements is materially correct. For a utility, these systems of controls often involve hundreds of individual controls reflected in thousands of pages of detailed processes and procedures. These controls uniformly have been designed around materiality thresholds established relative to the nature of the controls and the size of the business consistent with the longstanding approach to materiality discussed above.

Rebuilding a utility's system of internal controls to support the proposed footnote disclosure would require a comprehensive update of its internal controls and the imposition of new processes and procedures, including significant IT system modifications, at an extremely high cost that far exceeds any potential benefit to investors. This would be a several year process, and even then, it may not be possible to implement a system of internal controls capable of providing assurance for disclosures under the 1% threshold mandated by the proposed footnote requirement, even at the substantial cost that would be required to attempt to do so.

The Categories "Severe Weather Event" or "Other Natural Condition" are Unworkable

The proposed rule does not define "severe weather event" or "other natural conditions" or how such events and conditions may be related to anthropogenic climate change. Instead, it simply provides examples, and those examples do not provide actionable guidance[12]. Additionally, the proposed rules, at times, appear to include all "severe weather events" as "climate-related events" without explaining which weather events necessarily stem from climate change and, as such, must be accounted for when preparing consolidated financial statements. It can reasonably be argued that a definition for a "severe weather event" could not be appropriately included in the regulation because there is no single definition that would be broadly applicable. Consequently, it is an inappropriate standard for information that is required to be audited.

[12] In particular, the proposed rule provides as examples flooding, drought, wildfires, extreme temperatures and sea level rise.

There is no question that events, such as the examples provided by the Commission, can be "severe weather events," but when and to what extent are they to be considered "severe," and when should they be assumed to be related to climate change? Does traditional materiality analysis, *i.e.*, *TSC Industries, Inc. v. Northway, Inc.* and *Basic, Inc. v. Levinson*, apply to differentiate between an "ordinary weather event" and a "severe weather event" caused by climate change? Does comparison to other similar events define "severity"? For example, are Category 5 hurricanes "severe weather events," but not Category 1 hurricanes? There have always been hurricanes – which ones are to be assumed to be related to climate change? In addition, the severity of a weather event often will not be known until after-the-fact, requiring that accurately recording real-time accounting entries will necessitate a level of prescience as to whether the event ultimately will be determined to be "severe."[13]

Is the entire cost of a "severe" event considered climate-related, or only the incremental cost above some "average" or "normal" level? And what methodologies would be employed to determine such levels? Does the number of events in a particular year matter? For example, are named hurricanes in excess of 14 per year – an accepted annual average for named hurricanes– "severe weather events" related to climate change but not the named hurricanes occurring prior to reaching that average? If there are more than an average number of hurricanes in a year, but they all are modest in size, would any of them be "severe weather events" related to climate change? And, while hurricanes are used as an example, the same questions apply to the other examples included in the rule proposal. For example, would the flooding of a river that has flooded virtually every spring for the past hundred years be considered a "severe weather event" related to climate change?

The phrase "other natural conditions" raises similar issues. Since some natural conditions likely will be static or change only slowly over time, it might be more likely that a usable consensus would evolve in due course, particularly since the primary use of the concept appears to be to assess proximity to rising water levels. Even here, though, the same concern remains as to what threshold determines whether and to what extent the effect of other natural conditions is "severe" (and related to climate change) to a large enough extent to warrant disclosure.

Further, even if there were an understandable and agreed-upon definition of these terms, the occurrence of such events does not necessarily correlate with a severe or even material financial impact. The impact of an event depends not only on the severity of the event but also the response of the registrant.

Finally, the ambiguity of both "severe weather events" and "other natural conditions" would open registrants to litigation both from those who may believe enough events or conditions aren't

[13] Given the millions of accounting entries that would be relevant, it would be impractical to subsequently review and categorize each of them. The determinations are going to have to be made at the time of the initial transaction, and those determinations may or may not prove correct based on whatever parameter the registrant adopts for defining "severe," which likely will require hindsight. For example, would the removal of a utility pole from inventory and its installation prior to a subsequent heat wave be considered "severe" or simply a routine activity? Thus, it may literally be impossible to make the categorization that the proposed rule would require.

being reported as well as those who may believe that too many events or conditions are being reported, depending on their specific interpretation of these nebulous criteria.

When is an Activity a Transition Activity?

The proposed rule does not provide any guidance as to how activities that serve more than one purpose should be categorized. Should the cost be pro-rated relative to the more significant benefits expected? Does the primary purpose of the activity control the classification? Can *de minimis* and smaller benefits, which may be harder to quantify, be ignored? If an activity is "primarily" attributable to a "transition activity," should it then be included, but not others? More broadly, as our members develop and execute comprehensive plans to improve grid resilience while driving toward net-zero emissions, such activities represent normal ongoing operations in an increasingly carbon-free world.

While some activities are more clearly "transition activities," many do not lend themselves to ready categorization. Here are some examples:

- Over the last five years, many electric utilities have elected to retire existing coal-fired generating facilities and replace those facilities with natural gas-fired generating facilities. While these actions had the benefit of reducing GHG emissions, they also have other commercial motivations and have resulted in a reduction in costs to customers.
- The cost of undergrounding power lines is sufficiently high that electric utilities generally do not do it primarily for climate-related reasons but rather for customer-service related reasons, even though in some instances there may be climate-related ancillary benefits. Similarly, a reduction in line losses or pipeline leaks is often the result of asset replacements and other improvements for the primary purpose of improving reliability, resiliency or safety with GHG reductions being an important but secondary benefit.
- The first commercial nuclear plant in the U.S. was commissioned in 1958, and neither it nor most, if not all, of the existing nuclear plant fleet likely was built to reduce GHGs. In the future, a utility may construct a small modular nuclear generating unit to replace an existing natural gas-fired plant to address a portion of its generating needs. While the inclusion of nuclear generation will result in greater GHG reductions, the utility's motivation for including nuclear generation may be the benefits of fuel diversity or cost.
- Electric transmission and distribution utilities regularly replace or upgrade equipment and technology to increase resilience. There are climate-related reasons for these investments, such as preparing or hardening the system for increased weather events; making the grid more flexible for a renewable-heavy clean energy future; or preparing for a low-carbon economy marked by the electrification of transportation. But there are also non-climate-related reasons for these investments, such as general customer reliability.
- Since 1990, natural gas utilities have replaced over 116 thousand miles of pipeline with modern near zero emitting polyethylene (PE) and cathodically protected coated steel pipe, and have also upgraded their metering and regulating stations. While these modernization projects also resulted in an estimated 69 percent reduction in methane

emissions from U.S. gas distribution between 1990 and 2020, according to EPA[14], they were approved by state utility commissions primarily to improve the safety and reliability of the gas delivery system.

In each of these examples, there was a business reason in addition to GHG mitigation to make capital investments. The proposed rule is ambiguous with respect to the categorization of these and similar activities as "transition activities." We believe that "transition activities" should be limited to (a) activities with respect to which reducing GHG emissions is a significant purpose, (b) activities that materially reduce GHG emissions, or (c) activities that are driven by regulatory-required GHG emissions reductions, and registrants should have some level of discretion as to which activities meet those definitions.

Audit Requirement

Information does not need to be included in an audited footnote to be valid and reliable. Registrants routinely include substantial amounts of required disclosure information in filings with the Commission that are not audited and for which the absence of an assurance opinion has not been a problem. Rather, the Commission should rely on the commitment of registrants to provide materially accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws.

The rule proposal estimates that, on a six-year average, the average annual assurance cost for the audited footnote disclosure is $15,000 and that producing the information would take 64 hours. As noted in these comments, the extent of the work necessary in implementing this aspect of the proposed rule would entail much higher costs and require thousands of hours of additional incremental work that exceed the proposal's estimates by orders of magnitude.

The gap between the Commission's estimates and the estimates of those responsible for producing the results that the Commission has proposed is striking. Based on our industry's experience, as well as preliminary discussions with our auditors, the costs in incremental expenditures and work hours could be several times higher than the Commission's estimate. Furthermore, the ongoing compliance costs of sustaining this disclosure would be significantly more than the proposed rule estimates. Such costs would ultimately be passed onto customers in the utility industry and to energy consumers more broadly.

Summary of Recommendations Regarding Audited Footnote Requirements

It is reasonable to ask registrants to provide unaudited, good-faith estimates of the aggregated information called for by proposed Item 14-02 using a traditional measurement of materiality instead of mandating an arbitrary numeric threshold. The information could be provided in the same location as the Item 1500 *et seq*. information or in a schedule. It is not reasonable, however, to require either inclusion of this information in an audited footnote or a level of detail

[14] See EPA, *Inventory of U.S. GHG Emissions and Sinks*, April 2022

in any such disclosures that is far more granular than what investors or registrants would consider material in accordance with law and historic practice.

Rather than imposing an untested definition of "severe weather event," the Commission should base the disclosure on "unusual climate-related events" with material impacts to the registrant's business and initially should allow registrants to define what they consider typical climate events for the geographical areas where they operate and to provide good-faith estimates of the material financial impacts that they attribute to climate-related events that they consider unusual. This could include sector-specific approaches such as our industry's ESG/Sustainability template that has been so very successful.

Further, "transition activities" should be limited to (a) activities with respect to which reducing GHG emissions is a significant purpose, (b) activities that materially reduce GHG emissions, or (c) activities that are driven by regulatory-required GHG emissions reductions. The Commission should not require disclosure by line item or disclosure of immaterial impacts. The Commission should also encourage registrants to work with their trade associations and others to develop common standards for their respective industries, a process that we believe would generate significant comparability within a relatively short period of time, further benefiting users of the financial statements.

Attestation of Scope 1 and Scope 2 Emissions

The requirement for an attestation report covering Scope 1 and Scope 2 emissions is not necessary to assure reliability for the same reasons described above when addressing the proposed requirement to audit amounts to be included in notes to the financial statements, as well as the additional considerations regarding emissions reporting described below. There is no evidence that registrants are not reporting or will not report their emissions as accurately as possible or that attestations by third parties would improve the quality of the published measures. If an attestation requirement is included in the final rule, it should require no more than "limited assurance," not "reasonable assurance," in light of the factors we discuss below.

Current Reporting Practices are Reliable

Today, the largest registrants with meaningful GHG emissions from fixed sources report those emissions in some form to the EPA[15] as well as to other federal and state regulatory bodies. EEI and AGA members are subject to GHG air emissions reporting, generally to the EPA, but also in some instances to state regulators as part of their integrated resource planning processes or otherwise. Those reporting metrics may be measured differently than Scopes 1, 2, and 3.

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[15] Reporting to the EPA under the Mandatory Greenhouse Gas Reporting Rule (40 C.F.R. Part 98) has been required since 2010. For reporting year 2020, over 8,000 facilities and suppliers reported approximately 85 to 90 percent of the country's GHG emissions. See https://www.epa.gov/ghgreporting/ghgrp-reported-data.

AGA member natural gas utilities, for example, submit annual reports on their methane emissions and CO_2 combustion emissions for the previous calendar year by March 31 of each year under Subpart W of the GHG Reporting Rules, and EPA reviews that data before posting the company-specific gas utility emissions reports on the EPA website the following October. Similarly, EPA reviews and posts the GHG emission reports submitted by electric utilities under the GHG Reporting Rules.[16]

EEI members report the majority of their GHG emissions - which are predominantly CO2 emissions from fuel combustion from fossil-fired generation - to the EPA using continuous emissions monitoring systems located at each facility, and AGA members report their GHG emissions to EPA from direct emission surveys, metered throughput, competent counts and emission factors based on peer-reviewed scientific studies as required by EPA's GHG Reporting Rule (GHGRR). Both of these types of reports to EPA are required under the Clean Air Act and are subject to the Act's civil and/or criminal penalty provisions under section 113. EPA's GHGRR is often referred to as the "gold standard" of emissions reporting programs. In addition, EEI members file fuel use forms with the Energy Information Administration (EIA), and AGA members file gas supply data using EIA Form 176 "Annual Report of Gas Operations." EIA uses the data filed with EPA to calculate the national emissions inventory for the United States. It does not seem reasonable to require additional expense to attest or verify information that is already required and vetted by the federal government. In addition, if reporting is required by the Commission, registrants will be subject to the additional *in terrorem* effect of the anti-fraud provisions of the Federal securities laws. As noted, the current quality of the published information also reflects the commitment by registrants and others to report information accurately.

Furthermore, most of the largest registrants voluntarily produce annual reports on emissions that are publicly available on their websites or elsewhere. The result is that substantially all of our members' emissions are already reported to Federal and/or state regulatory bodies with specific expertise in those matters and are readily available publicly.

Cost of Attestation

We interviewed several chief accounting officers from our utility members. They estimated the cost of obtaining the proposed annual attestations would be substantially more than the Commission's estimated six-year annual cost of $52,000. We are particularly concerned that this cost would have an outsized impact on smaller utility companies. In large part we believe that this difference reflects the Commission's underestimation of how many different metrics must be combined in reporting Scope 1 and Scope 2 emissions and how much complex work will be necessary to validate that information consistent with normal attestation practices.

[16] See EPA's GHG Reporting Program, https://www.epa.gov/ghgreporting.

Timing and Scarcity of Resources

The timing of the proposed attestation requirement is unattainable. We acknowledge that, as discussed on page 48 of the proposed rule, data for the fourth quarter of the year could be estimated for the Form 10-K (with any material differences in the Q4 data being noted in the first Form 10-Q of the year). While we appreciate this concession, we believe it may be confusing to investors, unnecessarily more costly to registrants, and likely to lead to increased litigation exposure to include such estimates of these metrics in the Form 10-K.

Currently, annual reporting to the EPA is due on March 31st of each year. In order to file the reports, the information has to be gathered, reviewed, and assembled. It can be challenging to complete this process by the March 31st deadline. Moreover, the annual emissions data is not finalized with EPA until October.[17] The Commission's proposed rule contemplates that not only will this process need to be completed but that the information also will be attested by an even earlier deadline, almost always the end of February for most EEI and AGA members.

The Commission's proposed rule also contemplates numerous additional emissions-related data and metric disclosure requirements that far exceed what most of our member companies currently file with the EPA today. A registrant's ability to add these new emission metric disclosures to existing Form10-K processes will be challenging, and for some emission metrics may not be possible as they are gathered from third parties. If any information or data is required from third parties in order for a registrant to calculate emission metrics, it may not be readily available nor certified as reliable or attested data by the third party in time for it to be included within a registrant's own internal Form10-K processes.

Rushing the collection, processing, review, and disclosure of these metrics could result in emission metrics that may need to be revised later in the year as third parties verify and publicly attest to their own emission metrics. It is not reasonable or practical for registrants to rely on unverified sources of data from third parties in order to quickly calculate their emission metrics in line with the Commission's proposed rule and annual compliance dates.

While we can imagine registrants accelerating their gathering, review and assembling process (albeit at significant cost), it would be virtually impossible to compress that process into five or six weeks so that there would be time for the attestation process, particularly during the year-end audit when many of the needed resources will have other obligations as well. And changing the fiscal year for the required information - *e.g.*, such as is common for pension plan data that is not as hard to gather, analyze and assemble - would not be a solution as registrants still would be required to produce data based upon a calendar year-end for EPA and other purposes, thereby creating two different sets of data that would not be comparable.

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[17] The most recent emissions data available currently on the EPA website is for 2020 emissions, reported in March 2021 and posted in October 2021. See https://www.epa.gov/ghgreporting/find-and-use-ghgrp-data.

De Minimis Exemption for Scope 1 and 2 Emissions

Unlike current emissions reporting programs including the GHG Protocol and The Climate Registry's Reporting Protocol, the proposed rule does not contemplate an exemption of *de minimis* emissions for Scope 1 and 2 emissions. For example, the GHG Protocol identifies *de minimis* emissions as "a permissible quantity of emissions that a company can leave out of its inventory."[18] The Climate Registry's General Reporting Protocol describes miniscule (i.e., *de minimis*) sources as "very small sources of emissions that represent a high reporting burden, such as hand-held fire extinguishers, refrigerant in office water coolers, or CO2 from soda fountains."[19] Even for those members who currently report Scope 1 and Scope 2 emissions, most members are not including emissions from *de minimis* sources. Collecting and reporting *de minimis* direct emissions is overly burdensome and would provide little value to investors.

Recommendations Regarding Attestation of Scope 1 and 2 Emissions

The final rule should not require attestation of Scope 1 and 2 emissions disclosures. Instead, the Commission should rely on the reporting standards under existing federal and state regulatory frameworks such as the EPA's GHG reporting rule, other already-existing reporting regimes, the commitment of registrants to provide accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws and the other already-existing reporting regimes. There is nothing particularly unique about the proposed Scope 1 and Scope 2 disclosures as compared to numerous existing disclosures on other topics that would justify imposing an attestation requirement. Reporting such information should not be required any earlier than already mandated by EPA and should not be subject to any stricter requirements for attestation than already are required.

As a more reasonable and achievable alternative, the Commission could consider adopting an annual emissions-related schedule filing, compiled on a time schedule more consistent with the normal gathering of such data. Such a schedule, which could be filed on an updated version of Form SD, would separate the emissions metric reporting from the 10-K process. Reporting of emissions metrics would benefit from having more time to collect and verify third party data, staggering the review of the metrics and removal from the already compressed Form 10-K process, and ultimately produce a standalone, and more usable, GHG filing, rather than embedding it within the Form 10-K. Another potential solution would be to make the relevant GHG reporting period for SEC filings match the *prior year's* EPA reporting period so that it can rely on data that has already been fully gathered, filed and verified.

In addition, the Commission should allow issuers to exclude *de minimis* Scope 1 and 2 emissions sources from any climate disclosure reporting requirements ultimately adopted by the Commission.

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[18] The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard (Revised Edition) at 70.
[19] The Climate Registry, General Reporting Protocol Version 3.0 (May 2019) at B-7.

Burdensome and Immaterial Information Required on Risk and Scenario Planning

The proposal includes numerous risk-related disclosure requirements that should be limited based on materiality, at a minimum, if included at all. For example, requiring disclosure of the location of assets at risk due to climate change-related impacts is impractical, burdensome, and would result in reams of immaterial data for companies that have electric transmission and distribution (T&D) and/or natural gas pipeline systems. Similarly, other proposals that should be eliminated or limited to financially material items include proposed Item 1506 of Regulation S-K regarding disclosure and tracking against targets, goals and regulatory requirements; operational boundaries and locations of assets or operations by zip codes; scenario analysis and the potential for disclosure of confidential and/or competitive information; and overall risk management process disclosure, which already is extensive.

With regard to disclosure of location information, the proposal suggests this would help investors identify physical risk; however, a source's GHG emissions have no relationship to local physical risk as its emissions do not directly correlate with physical risk at the site of the emissions. Furthermore, this proposed disclosure would be very difficult and even impossible, especially for non-stationary assets (i.e., mobile vehicles), overly burdensome, and result in potentially hundreds of thousands of reported data points (i.e., individual T&D emissions sources) in the filing that do not add value for investors. Additionally, material properties are already disclosed by location in the properties section of Form 10-K.

And "transition risks" are defined by the Commission to include a multitude of potential impacts that would require speculative (and perhaps business confidential) disclosures, like "reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts, etc." (See definition in proposed Regulation S-K Item 1500(a)(4).)

Duplication of Effort by Parents and Subsidiaries

A number of registrants, particularly utilities, but also financial institutions and others, have subsidiaries that also are registrants as a result of having outstanding debt, preferred stock and other securities. The proposed rule would require that the parent entity and each of the subsidiaries provide the additional climate-related information, attestations in certain instances, and audited footnote. Because the parent's information would include all of the subsidiaries' information, the information filed would be substantially duplicative.

Similarly, the proposal would require registrants to include their proportionate share of emissions amounts for unconsolidated affiliates over which they do not exercise control. This again would result in duplicative disclosures to the extent that those affiliates are registrants subject to the same requirement. If they are not registrants, it is likely that the same issues identified earlier with obtaining reliable, consistent, and timely disclosure information from customers and suppliers would pertain here as well.

This duplication of disclosures would add significant cost without meaningful informational or other benefit. Accordingly, the Commission should exempt from the new requirement registrants that are consolidated subsidiaries of a parent registrant when the parent registrant's climate-related disclosures encompass the consolidated subsidiaries. Additionally, the Commission should not require a registrant to include disclosures of its share of the emissions of unconsolidated affiliates and those over which it does not exercise control.

Summary of Recommendations Regarding Duplication of Effort

Wholly owned subsidiaries of parent companies that qualify for the Commission's Form10-K/10-Q reduced disclosure format as outlined in General Instruction (H)(1)(a) and (b) of Form 10-Q and General Instruction (I)(1)(a) and (b) of Form 10-K should be exempted from providing the additional climate-related disclosures as long as the parent company is doing so. This approach would be consistent with an established Commission framework that was specifically designed to provide a similar type of disclosure relief for other Form 10-K/10-Q disclosure requirements as long as those requirements were being fulfilled at the parent company level.[20] Additionally, registrants should not be required to disclose their share of the emissions of affiliates over which they do not exercise control.

Recommendations to Reduce Unnecessary Exposure to Liability

The Commission may be underestimating the increased exposure to liability that registrants will face as a result of inclusion of the additional information in Commission filings due to the high level of subjectivity and extensive use of estimates inherent in the proposed disclosures, as we have documented throughout this letter. Moreover, the consequences of being wrong could be severe, particularly where a registrant has an active 1933 Act registration statement that incorporates its Forms 10-K by reference and elevates any liability from liability based upon Rule 10b-5 (and similar provisions) to liability based upon Sections 11 and 12.

As a result, we suggest that the Commission provide that any information ultimately required under Items 1500 to 1506 be deemed "furnished" rather than "filed" for liability purposes. This approach has passed the test of time in other contexts, is appropriate in this context as well, and could result in more disclosure, given that submitting this information as "filed" may discourage and limit disclosure given the incremental risk of legal liability.

Moreover, we believe that the Commission should expand the safe harbor proposed in Item 1504(f) so that it both (a) covers any statement made in response to subpart 1500, not just

[20] A registrant that is a direct or indirect wholly-owned subsidiary of another registrant, and meets certain other conditions (as outlined in General Instruction I to Form 10-K), is entitled to relief from certain disclosure requirements. Such registrants may omit the information required by Item 7, MD&A if they instead provide a narrative analysis of the results of operations that meets certain requirements. These entities are also entitled to omit certain governance information and to limit the information provided in Item 1, Business, and Item 2, Properties.

statements made with respect to Scope 3 emissions, and (b) provides a presumption that an estimate made in "good faith" satisfies the "reasonable basis" condition.

In the absence of these critical changes to the Commission's proposal, electric utilities in particular may be uniquely exposed to liability associated with generation resource planning information that would likely need to be reported in connection with proposed Item 1506 (e.g., "[h]ow the registrant intends to meet its climate-related targets or goals"). Electric utilities operating in vertically integrated markets typically must report to their state utility regulator their plans for how the utility's mix of generation resources will reliably serve customer electricity demand into the future.

Such planning is intended to be directional only and looks many years into the future, for instance 10 to 15 to 20 years in some cases, but is not intended to be a concrete plan of action for future electric utility resource decisions. Accordingly, in many cases electric utilities prepare resource plans that feature multiple scenarios, and actual operations often deviate from such plans. Without a more comprehensive safe harbor—one that would cover Item 1506 and other disclosures proposed under subpart 1500—pulling these directional resource plans into the realm of Commission climate disclosure exposes electric utilities to extensive, previously unheard-of liability potentially associated with deviations from plans to achieve climate goals or targets.

While the Private Securities Litigation Reform Act of 1995 (PSLRA) safe harbor should cover most forward-looking statements, it is not available to registrants that recently have resolved certain enforcement matters with the Commission. There remains substantial debate in the case law as to what "identify" means in the context of the safe harbor's conditions, and it is unclear what "reasonably cautionary language" would mean in the context of climate-related information. In addition, while "reasonable basis" is an attractive standard, it does not fully recognize the number and complexities of the estimations (probably thousands for a large registrant) that will need to be made for even reporting Scope 1 and Scope 2 emissions, as well as many of the qualitative and forward-looking climate-related disclosures that have been proposed.

Recommendations

The final rule needs to provide necessary liability protections in order to encourage good-faith disclosures of the unique information it is requiring. In order to further the Commission's intent to increase the amount of climate-related information that is disclosed, there should be no increased risk exposure for disclosure made in good faith. The Commission is asking for an unprecedented level of disclosure; the liability exposure needs to be adjusted to reflect that as recommended above. Of course, the Commission always can enforce its rules as it deems appropriate, and ample investor protections would exist.

Exemption for Foreign Private Issuers

Several of our members are FPIs. Under many Commission reporting rules and regulations applicable to US companies, FPIs are granted specific exemptions from complying with US disclosure obligations and may defer to and comply with their home country rules. Moreover, many FPIs (such as those based in the European Union and United Kingdom) already are required to disclose climate-related information in their home jurisdictions. Here, the Commission's proposed rule would require such FPIs to go beyond their home country's requirements in order to satisfy their US disclosure requirements.

Summary of Recommendations

The final rule should include an express FPI exemption. Such an exemption would allow a FPI to defer to its home country's climate change reporting protocols in its Annual Report and Accounts (ARA) rather than complying with the Commission's proposed rule. The FPI exemption would eliminate the additional costs, expenses and reporting burdens associated with dual-country climate reporting which would more likely than not contribute to more investor confusion when comparing disclosure of US and non-U.S. company climate change reporting.

Governance Disclosures

We disagree with the location and content of the governance disclosures in the proposed rule. While investors may be interested in climate-related governance, and these matters are a subject of focused attention for our members' Boards of Directors and management, any disclosure about governance matters should be located in proxy statements, where other corporate governance-related information currently is already disclosed extensively.

Similarly, the proposal is far too granular in its focus on the qualifications and experience of directors. Requiring detailed information about individuals' experience and a registrant's procedures is micro-management. A rule that is interpreted to focus narrowly on scientific and technical expertise in climate matters may come at the expense of ensuring boards retain the strategic and other diverse experience that is critical to effective governance. Further, with regard to entity-specific climate-related matters, specific modeling or risk management information could be competitively sensitive and reveal confidential information that would be detrimental to the very entities that are acting in good faith to limit emissions.

Summary of Recommendations Regarding Governance Disclosures

For governance disclosure requirements included in the final rule, we believe the Commission should clarify the meaning of "expertise regarding climate-related risks," including through the provision of a non-exclusive list of skills, experiences and qualifications that would be deemed to reflect climate expertise, similar to the Commission's approach to the definition of an "audit committee financial expert." This list should reflect a recognition that expertise in climate-related risks does not require scientific, governmental or academic experience or training specific to environmental or climate matters. For example, senior executive experience directly or indirectly overseeing utility or other manufacturing operations and the attendant environmental regulations, compliance requirements, and long-term planning inherent in such operations should be considered to constitute the expertise contemplated by the rule.

Implementation Date Should be Delayed

In light of the issues discussed above, it is unlikely that the implementation schedule reflected in the proposed rule can reasonably be met by most registrants. The proposal appears to assume that most registrants are aligned with the TCFD recommendations and the GHG Protocol and therefore the reporting burden created by the proposed rule would be minimized. However, not all registrants are aligned with TCFD. They would have to begin gathering data even before the Commission publishes the final rule, and it is highly unlikely that information for earlier years will be reasonably available. This timing means registrants would have to "guess" about the language yet to be published in a final rule, likely leading to a waste of resources and expenditures that may turn out to be unnecessary. The utility industry is rate-regulated, and these compliance costs would become part of the utility's cost of service and part of base rates that likely would be borne by energy customers across the nation.

Moreover, as discussed above, many, if not all, registrants will need to implement changes to their charts of accounts, update their internal controls over financial reporting and disclosure controls, implement systems for capturing the necessary information, and develop the necessary skills needed to analyze the information and accurately produce the metrics that the Commission requires. These are enormously costly and time-consuming tasks, and, if required to be completed on an accelerated basis, will result in additional, unnecessary costs as the resources for implementation are limited.[21] This is especially true for smaller companies. For comparison, the implementation of the FASB's lease accounting rules required herculean efforts over years to develop and implement systems to capture the necessary information for financial reporting.

Summary of Recommendations Regarding Implementation Dates

We recommend that the Commission delay implementation of the final rule until two fiscal years after publication of the final rule. We recommend that all quantitative disclosures be required only on a prospective basis (that is, for the year of implementation and subsequent years only and not on a comparable basis for prior years for which the necessary detail and internal controls either did not exist or would not be able to be recreated).

[21] In addition, EPA recently proposed changes to the GHG Reporting Rules for reporting year 2023. Companies will concurrently be dealing with adjusting data collection, calculation methodologies, and reporting documentation to address those EPA rule changes as well as for the SEC reporting changes, compounding resource constraints.

Conclusion

We commend the Commission for its efforts to enhance climate-related disclosure and appreciate the opportunity to comment on the proposals. We believe, however, that some of the most burdensome aspects of the incremental disclosure would not produce benefits that outweigh the costs and, in some cases, would lead to investor confusion by requiring the disclosure of overwhelmingly voluminous, immaterial information.

As a result, the Commission should adjust the disclosure, audit and attestation requirements as discussed above. Additionally, the Commission should delay the effective date as we have recommended to provide sufficient time to implement any of the final rule's provisions accurately and assure adequate liability protections commensurate with the nature of the new disclosures. Finally, the final rule should only require prospective disclosures covering periods for which the necessary processes and controls have been able to be designed and implemented. With these changes the new disclosure requirements will better balance the burden that they impose with the benefits of providing investors with more reliable, comparable, and useful information for making informed investment decisions.

EEI and AGA would be happy to discuss any questions on our recommendations at the Commission's convenience.

Respectfully submitted,

Richard McMahon
Senior Vice President, Energy Supply & Finance
Edison Electric Institute
(202) 508-5571
rmcmahon@eei.org

Pamela A. Lacey
Chief Regulatory Counsel
American Gas Association
(202) 824-7340
placey@aga.org

EPA

Scope 3 Inventory Guidance

On this page:

- Description of Scope 3 Emissions
- Scope 3 Calculation: Practical Guidance
- Supply Chain Guidance
- Scope 3 Emission Factors
- Scope 3 Resources

Description of Scope 3 Emissions

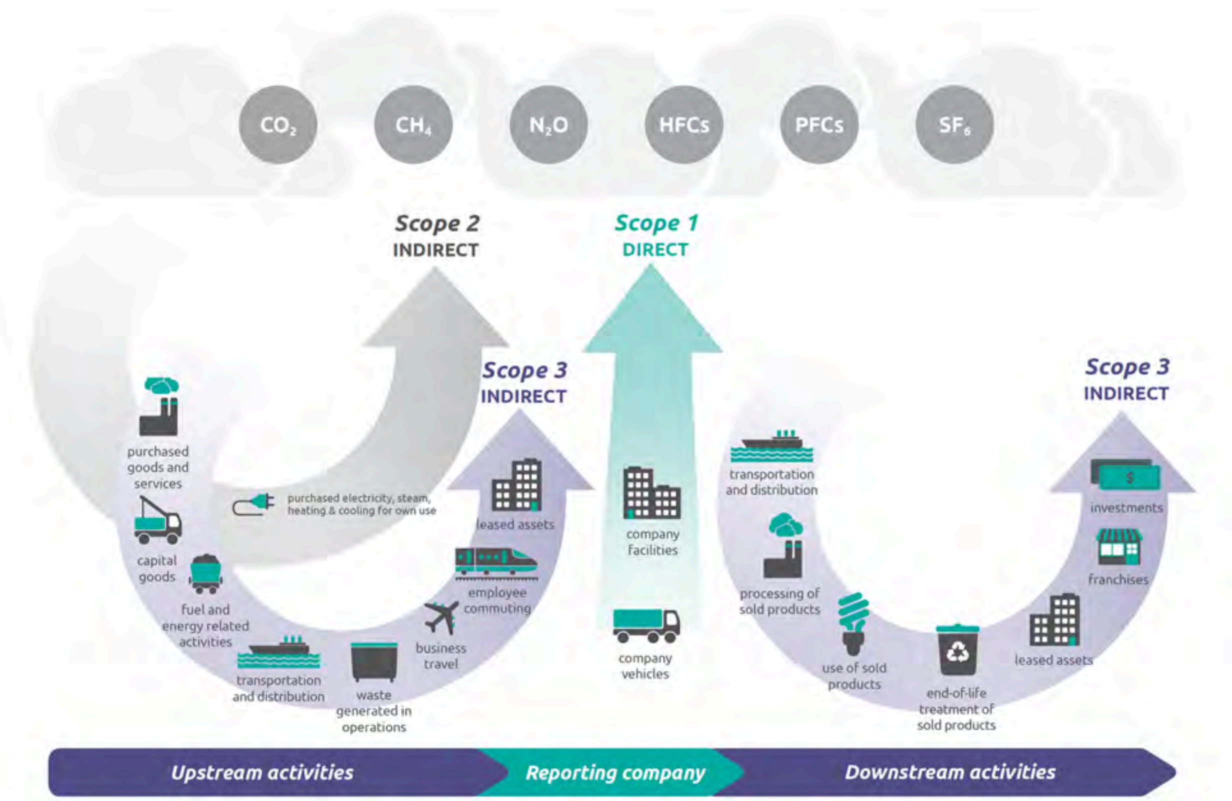
Scope 3 emissions are the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly affects in its value chain. An organization's value chain consists of both its upstream and downstream activities. Scope 3 emissions include all sources not within an organization's scope 1 and 2 boundary. The scope 3 emissions for one organization are the scope 1 and 2 emissions of another organization. Scope 3 emissions, also referred to as value chain emissions, often represent the majority of an organization's total greenhouse gas (GHG) emissions.

The GHG Protocol defines 15 categories of scope 3 emissions, though not every category will be relevant to all organizations (see Figure 1). Scope 3 emission sources include emissions both upstream and downstream of the organization's activities.

To fully meet GHG Protocol standards, an organization must report emissions from all relevant scope 3 categories. More organizations are reaching into their value chains to understand the full GHG impact of their operations. In addition, because scope 3 sources may represent most of an organization's GHG emissions, they often offer emissions reduction opportunities. Although these emissions are not under the organization's control, the organization may be able to affect the activities that result in the emissions. The organization may also be able to influence its suppliers or choose which vendors to contract with based on their practices.

The GHG Protocol's Corporate Value Chain (Scope 3) Accounting and Reporting Standard <https://ghgprotocol.org/standards/scope-3-standard> ("Scope 3 Standard") presents details on all scope 3 categories and requirements and guidance on reporting scope 3 emissions.

Figure 1. Overview of GHG Protocol scopes and emissions across the value chain



Source: Scope 3 Standard (pdf) <https://ghgprotocol.org/sites/default/files/standards/corporate-value-chain-accounting-reporing-standard_041613_2.pdf> (5.9 MB), page 5.

Scope 3 Calculation: Practical Guidance

The Scope 3 Standard (pdf) <https://ghgprotocol.org/sites/default/files/standards/corporate-value-chain-accounting-reporing-standard_041613_2.pdf> (5.9 MB) presents details on all scope 3 categories and requirements and guidance on reporting scope 3 emissions. The practical guidance below provides further suggestions on calculating scope 3 emissions.

Establishing a relevant, complete, consistent, transparent, and accurate scope 3 emissions inventory is a process of continuous improvement. Table 1 provides a description of organizational phases of scope 3 engagement for common inventorying best practices. For some organizations, understanding GHG inventorying efforts within the broader market may spur competition and garner internal support for widening inventorying activities.

Table 1: Organizational Phases of Scope 3 Engagement

Stage	Does your company calculate and publicly disclose at least some scope 3 emissions?	Does your company assess the climate impacts of major suppliers and engage them on climate-related issues?	Does your company receive third-party verification for its scope 3 emissions and publicly disclose the results?
No activity	Organization does not calculate and publicly disclose any scope 3 emissions.	Organization does not assess the climate impacts (both actual and significant potential impacts) of major suppliers or engage them on climate-related issues.	Organization does not receive third-party verification for its scope 3 emissions or publicly disclose the results.
Entry-level	Organization calculates and publicly discloses at least some scope 3 emissions.	Organization assesses the climate impacts (both actual and significant potential impacts) of major suppliers and engages them on climate-related issues.	Organization receives third-party verification for a portion of its scope 3 emissions and publicly discloses the results.
Intermediate	Organization calculates and publicly discloses more than two categories of scope 3 emissions that are considered relevant in their value chain.	Organization assesses the climate impacts (both actual and significant potential impacts) of their major suppliers and engages them to report and reduce their GHG emissions.	Organization receives third-party verification for all its scope 3 emissions and publicly discloses the results.

Stage	Does your company calculate and publicly disclose at least some scope 3 emissions?	Does your company assess the climate impacts of major suppliers and engage them on climate-related issues?	Does your company receive third-party verification for its scope 3 emissions and publicly disclose the results?
Advanced	Organization calculates and publicly discloses all relevant categories of scope 3 emissions.	Organization assesses the climate impacts (both actual and significant potential impacts) of their major suppliers, engages them to report and reduce their GHG emissions, and considers supplier GHG management in business decisions.	Organization receives third-party verification for all its scope 3 emissions to at least a level of limited assurance and publicly discloses results.

Quantifying scope 3 emissions can be broken into three steps:

Step 1: Determine relevant scope 3 categories

The first step is a relevance assessment to determine which of the 15 categories are relevant to the reporting organization. Table 6.1 of the Scope 3 Standard (pdf) <https://ghgprotocol.org/sites/default/files/standards/corporate-value-chain-accounting-reporing-standard_041613_2.pdf> (5.9 MB) provides criteria to identify relevant scope 3 activities:

- Size

- Influence
- Risk
- Stakeholders
- Outsourcing
- Sector guidance
- Other

To determine relevance, the organization can review the Scope 3 Standard's description of each scope 3 category and consult appropriate contacts across the organization. In some cases, an emissions estimate may be necessary to determine if the category is relevant based on size. A rough estimate will suffice, but if that is not possible, then proceed to step 2 to estimate emissions.

Step 2: Estimate GHG emissions

Estimates for scope 3 categories can vary in accuracy depending on the available data and the organization's quantification goal. For example, category 4 (upstream transportation and distribution) has three methods: fuel-based, distance-based, and spend-based. The GHG Emission Factors Hub <https://epa.gov/climateleadership/ghg-emission-factors-hub> provides factors for several scope 3 categories and indicates the calculation methods with which the factors align. For example, Table 8 of the GHG Emission Factors Hub lists factors aligned with the distance-based method. If fuel activity data are available, the fuel-based method should be used, so the factors presented in Tables 2 and 3 would be applicable. See the "Scope 3 Emission Factors" section below for more details.

The GHG Protocol provides Scope 3 Calculation Guidance <https://ghgprotocol.org/scope-3-calculation-guidance-2> which details multiple calculation methods for each scope 3 category based on level of specificity and available data.

For financial institutions, *The Global GHG Accounting and Reporting Standard for the Financial Industry (pdf)* *<https://carbonaccountingfinancials.com/files/downloads/pcaf-global-ghg-standard.pdf>* (10.2 MB), published by the Partnership for Carbon Accounting Financials <https://carbonaccountingfinancials.com/>, offers specific guidance on calculating scope 3, category 15 (investments) emissions.

Step 3: Improve and expand emissions estimate over time

Many organizations will improve the accuracy of scope 3 emissions over time and expand to include more categories as adequate data become available.

Improve

- **More accurate data sources.** This could include moving from secondary sources to primary ones. For example, in the first year of reporting, an organization may only be able to track spend for business travel, but in subsequent years, miles traveled by type (air, rail, car) may be available.
- **More specific calculation methods.** It is appropriate to use a combination of calculation methods within a category (for example, collecting supplier emissions data for high emissions suppliers and estimating based on spend for the remaining suppliers). However, these methods should remain consistent for year-over-year comparison; any change in method used will require historical adjustments (see Chapter 9 of the Scope 3 Standard <https://ghgprotocol.org/standards/scope-3-standard>).

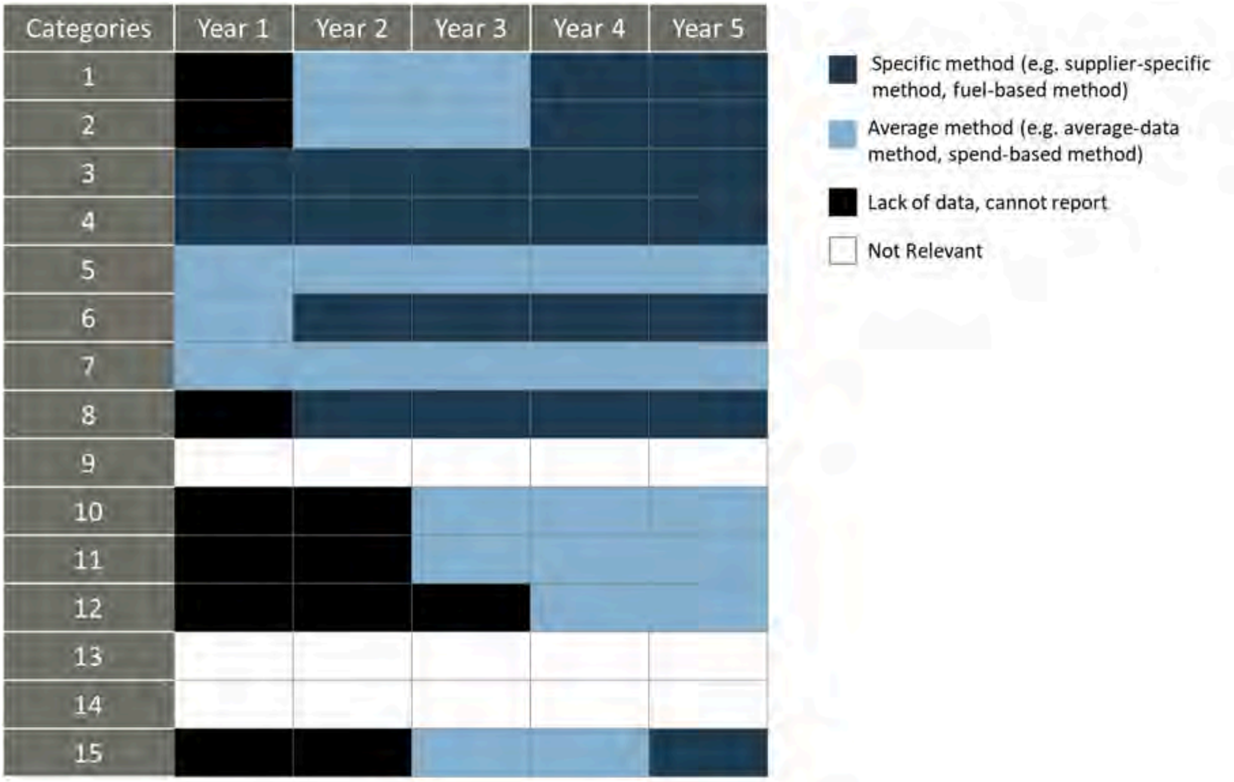
Expand

Some scope 3 categories may be relevant, but initially lack readily available data to use in estimating emissions. The organization may be able to expand its reporting by estimating these relevant categories in the future, which is recommended to increase completeness.

When making these improvements, it is recommended to focus first on categories with the largest impact on the organization's total GHG inventory.

Figure 2 shows an example progression over time of improvement and expansion. Five categories are reported in year one and 12 in year five. Only two categories use a specific method (e.g., supplier-specific method, fuel-based method) in year one and seven in year five.

Figure 2. Scope 3 calculation method improved and boundary expanded over time



Supply Chain Guidance

An organization’s supply chain comprises its upstream activities (see Figure 1). Organizations' supply chains emissions are, on average, 11.4 times higher than operational emissions, which equates to approximately 92% of an organization's total GHG emissions (Source: CDP 2020 Global Supply Chain Report (pdf) (4.2 MB)).

EPA’s supply chain guidance <https://epa.gov/climateleadership/supply-chain-guidance> provides information on:

- Why engage suppliers?
- How to engage suppliers.
- Building internal support in supply chain management.
- Leveraging third-party programs.
- Examples of sector-specific engagement.
- Resources for reducing supply chain emissions.

Scope 3 Emission Factors

Table 2 shows EPA's recommended source of emission factors for each scope 3 category. The most common sources listed in the table are:

- EPA's USEEIO supply chain GHG emission factors are based on US Environmentally-Extended Input-Output models and are presented in emissions per dollar of spend.
- EPA's GHG Emission Factors Hub <https://epa.gov/climateleadership/ghg-emission-factors-hub> provides factors for most scope 3 categories. Some categories do not require specific emission factors, because the emissions-generating activities have associated scope 1 and scope 2 factors already available.

Table 2. Emission Factors Available by Scope 3 Category

Scope 3 Category	Emission Factor Source
1 (purchased goods and services)	USEEIO
2 (capital goods)	USEEIO

Scope 3 Category	Emission Factor Source
3 (fuel- and energy-related activities)	**Activity A. Upstream emissions of purchased fuels** The UK Department for Environment Food & Rural Affairs provides well-to-tank (i.e., upstream) emission factors for fuel in the "Conversion factors 2023: full set (for advanced users) <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2023>" spreadsheet (on the "WTT- fuels" worksheet). **Activity B. Upstream emissions of purchased electricity** • The UK Department for Environment Food & Rural Affairs provides well-to-tank (i.e., upstream) emission factors for electricity in the "Conversion factors 2021: full set (for advanced users) <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2021>" spreadsheet (on the "WTT - UK & overseas elec" worksheet, WTT- overseas electricity (generation) table). ◦ Note that 2021 was the last year that Defra made this publicly available for all international countries • The International Energy Agency has released free of charge Life Cycle Upstream Emission Factors <https://www.iea.org/data-and-statistics/data-product/life-cycle-upstream-emissions-factors-2024-2> (Pilot Edition), a new pilot database including the life cycle emission factors corresponding to national electricity grids (Fuel-cycle factors worksheet). **Activity C. Transmission and distribution (T&D) losses** **US:** EPA’s Emissions & Generation Resource Integrated Database (eGRID) provides U.S. transmission and distribution loss factors by grid region in its data file <https://epa.gov/egrid/detailed-data> (on the “GGL22” worksheet). **International:**

Scope 3 Category	Emission Factor Source

	• The UK Department for Environment Food & Rural Affairs provides T&D emission factors for electricity in the "Conversion factors 2017: full set (for advanced users) <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2017>" spreadsheet (on the "Transmission and distribution" worksheet).
	  ◦ Note that 2017 was the last year that Defra made this publicly available for all international countries
	  ◦ Per the GHG Protocol, T&D (Activity C), includes the upstream emissions from T&D line losses. It is recommended to include the upstream impact of T&D loss from Defra 2021 (on the "WTT - UK & overseas elec" worksheet, WTT- overseas electricity (T&D) table).
	• The International Energy Agency has released free of charge Life Cycle Upstream Emission Factors <https://www.iea.org/data-and-statistics/data-product/life-cycle-upstream-emissions-factors-2024-2> (Pilot Edition), a new pilot database including the life cycle emission factors corresponding to national electricity grids (Life cycle T&D factors worksheet).
	• The International Energy Agency includes T&D factors in the annual release of emission factors from electricity and heat generation <https://www.iea.org/data-and-statistics/data-product/emissions-factors-2023> ("T&D losses adjustment" worksheet); fee-based.
	
	Activity D. Generation of purchased electricity that is sold to end users
	Applicable to utility companies and energy retailers. Reference eGRID regional or plant specific emission factors for the generation emissions of purchased electricity that is sold to end users, and reference the upstream generation emissions factors listed above for Activity B for the upstream generation emissions of purchased electricity sold to end users.

Scope 3 Category	Emission Factor Source
4 (upstream transportation and distribution)	EF Hub, Table 8
5 (waste generated in operations)	EF Hub, Table 9
6 (business travel)	EF Hub, Table 10
7 (employee commuting)	
8 (upstream leased assets)	EF Hub; apply scope 1 and 2 factors
9 (downstream transportation and distribution)	EF Hub, Table 8
10 (processing of sold products)	EF Hub; apply scope 1 and 2 factors
11 (use of sold products)	
12 (end-of-life treatment of sold products)	EF Hub, Table 9

Scope 3 Category	Emission Factor Source
13 (downstream leased assets)	EF Hub; apply scope 1 and 2 factors
14 (franchises)	
15 (investments)	

To apply the EF Hub scope 1 and 2 factors, the organization can first define the GHG generating activity for each relevant source category, then apply the appropriate factors for stationary combustion, mobile combustion, fugitive emissions, electricity, heat, or steam.

For example, if an organization produces electronic equipment, Category 11 (use of sold products) may likely be a large source of emissions. To calculate emissions, estimate the lifetime electricity consumption (in kWh) for all products sold in the reporting year. Then calculate electricity emissions using emission factors in the EF Hub. Depending on the data available for the location of product use, apply eGRID subregion or U.S. national average factors.

Scope 3 Resources

Standards and Guidance

- Renewable Electricity Procurement on Behalf of Others: A Corporate Reporting Guide (pdf) <https://www.epa.gov/system/files/documents/2022-05/renewable_electricity_procurement.pdf> (682.4 KB) is a U.S. practice paper focused on key principles for procuring renewable electricity on behalf of value chain partners and provides examples for several procurement scenarios. It aligns with the principles of the GHG Protocol Scope 2 Guidance <https://ghgprotocol.org/scope_2_guidance> for renewable electricity procurement within a reporting entity's value chain.
- Renewable Electricity Procurement for Use of Sold Products (pdf) <https://www.epa.gov/system/files/documents/2024-09/buying-re-for-category-11-sold-products.pdf> (906.61 KB) is a U.S. practice paper that discusses how renewable electricity procurement may help reporting organizations reduce their scope 3, category 11 GHG emissions that result from the use of sold products that consume electricity.

- Indirect Emissions from Events and Conferences (pdf) <https://www.epa.gov/sites/default/files/2018-12/documents/indirectemissions_draft2_12212018_b_508pass_3.pdf> (1.98 MB, December 2018) covers indirect emissions—including emissions from travel, hotel stays, and the venue itself—for events (e.g., sporting events, concerts) and conferences (e.g., business meetings, exhibits, conventions).

Tools

- ENERGY STAR Scope 3 Use of Sold Products Analysis Tool V2.0 (November 2023) (xlsm) <https://www.energystar.gov/sites/default/files/asset/document/energy%20star%20scope%203%20use%20of%20sold%20products%20analysis%20tool%20v2.0_0.xlsm> allows retailers to benchmark and project corporate scope 3 GHG emissions associated with the use of sold products. Developed jointly with EPA's Center for Corporate Climate Leadership, this tool quantifies emissions associated with current sales of ENERGY STAR products and forecasts reductions in emissions based on increases in sales of ENERGY STAR products. With over 70 categories, it can help retailers of any size pinpoint the types and quantities of ENERGY STAR products that will bring them closer to meeting or beating their corporate carbon emission goals.

Last updated on April 23, 2025

ENERGY & POLICY INSTITUTE

Home » Paying for Utility Politics: How ratepayers are forced to fund the Edison Electric Institute and other political organizations

REPORTS UTILITIES

Paying for Utility Politics: How ratepayers are forced to fund the Edison Electric Institute and other political organizations

The Edison Electric Institute is an inherently political organization, and a powerful one. At $90 million, its budget is the highest it has been in over a decade – a budget that the nation's electric ratepayers have helped fund.

The Energy and Policy Institute's latest report explores how regulated investor-owned utility companies are including their EEI annual membership dues in their general operating expenses. This widespread practice results in ratepayers subsidizing the political activities of EEI, with which they may not agree and from which they may not benefit.

[su_box title="Download report" box_color="#ffffff" title_color="#00000" radius="2"]**Paying for Utility Politics: How ratepayers are forced to fund the Edison Electric Institute and other political organizations** [/su_box]

In 2015, Missouri Public Service Commission staff filed in an Ameren Missouri's rate case that while ratepayers may receive some benefit from membership in EEI, "**the membership appears to primarily benefit the Company and its shareholders**." Staff recommended during rate case proceedings that all dues be disallowed.

The report adds more evidence for commission staff and intervenors that have attempted to protect ratepayers from paying for political activities. The report includes EEI's own annual reports, which have been provided by EEI to its members, that reveal the "results" the trade association achieved. The objectives have included working to reform electric rates and advocacy for increased fixed and demand charges. Other priorities dealt with EPA regulations, tax issues, litigation efforts, and outreach activities to "minority and community organizations." Some of these expenses might fall under what EEI reports as lobbying and nondeductible expenses to its members, but many of them likely would not (see 2012 results; 2013 results; 2014 outlook; 2015 results; 2016 goals).

Data from EEI's annual reports to the IRS reveal that from 2004 through 2015 EEI spent a total of $130.6 million for nondeductible lobbying and political expenditures, which is an average of 14% of its total expenses during that period ($909.8 million), or an average of 17% of total dues from its members ($759.4 million). The annual lobbying/nondeductible percentage is what EEI notes on its invoices to the investor-owned utility companies, which then are used as justification for the utility's proposed shareholder/ratepayer allocation of payment.

EEI Edison Electric Institute
Power by Association

701 Pennsylvania Avenue, N.W. ▪ Washington, D.C. 20004-2696 ▪ Phone (202) 508-5000

Invoice for Membership Dues

MR. GREGORY E. ABEL
CHAIRMAN, PRESIDENT AND CEO
BERKSHIRE HATHAWAY CORPORATION
PO BOX 657
DES MOINES, IA 50306-0657

Date	Invoice Number
12/02/2014	DUES201508

Payment due on or before 1/30/2015

Description	Total
2015 EEI Membership Dues for:	
Regular Activities of Edison Electric Institute [1]	$2,015,103
Industry Issues [2]	201,510
Restoration, Operations, and Crisis Management Program [3]	15,000
2015 Contribution to The Edison Foundation, which funds IEI [4]	50,000
Total	**$2,281,613**

1 The portion of 2015 membership dues relating to influencing legislation, which is not deductible for federal income tax purposes, is estimated to be 13%.

2 The portion of the 2015 industry issues support relating to influencing legislation is estimated to be 25%.

3 The Restoration, Operations, and Crisis Management Program is related to improvements to industry-wide responses to major outages (e.g. National Response Event); continuity of industry and business operations; and EEI's all hazards support and coordination of the industry during times of crises. No portion of this assessment is allocable to influencing legislation.

4 The Edison Foundation is an IRC 501(c)(3) educational and charitable organization. Contributions are deductible for federal income tax purpose to the extent provided by law. Please consult your tax advisor with respect to your specific situation.

Invoice to Berkshire Hathaway Energy from NV Energy's rate case

MEC, PacifiCorp, and NV Energy
2015 EEI Dues Calculation (NV Energy Portion) ✓

Customers (excludes non-regulated)

160,634	@	0.243 =	39,034	
385,522	@	0.095 =	36,625	
640,196	@	0.087 =	55,697	
3 1,186,352				131,356

Revenues

580,008	@	0.142287 =	82,528	
580,008	@	0.083 =	48,141	
1,867,739	@	0.061 =	113,932	
1 3,027,755				244,601

Owned Generating Capacity

801,381	@	0.037 =	29,651	
1,869,889	@	0.032 =	59,836	
4,600,729	@	0.013 =	59,809	
2 7,272,000				149,297

			Lobbying a/c# 426411	Balance a/c# 930264	Contributions a/c# 426131	Total
Total Dues (Fully Merged)	625,253					
Adjustment for Merger Phase In	59,131 ✓					
Regular Activities of EEI	584,385	13% lobbying	75,970 ✓	508,415		584,385
Industry Issues	58,438	25% lobbying	14,610 ✓	43,828		58,438
Restoration, Operations, and Crisis Management Program	4,350	0% lobbying		4,350		4,350
2015 Contribution to the Edison Foundation	14,500	charitable contribution			14,500	14,500
	661,673		90,580	556,593	14,500	661,673

Corporate Accounting
12/5/2014 10:46 AM

Page 4 of 4

w:\corpacct\bri\2015 EEI Dues Calculation Check.xls

Docket 16-06XXX; MDR 94E Attach 03

NV Energy using the nondeductible percentages from EEI's invoice

However, EEI engages in and incurs expenses for a host of other political activities that are beyond the set of costs that are categorized as nondeductible section 162(e) dues. In fact, the report shows that in the most recent year from which we have a detailed breakdown, nearly 70% of EEI's expenditures were categorized as legislative advocacy; legislative policy research; regulatory advocacy; regulatory policy research; advertising; marketing; public relations.

Table 31: EEI Spending Data 2005 (Audited)

Edison Electric Institute
Schedule of Expenses by NARUC Category
For Core Dues Activities
For the Year Ended December 31, 2005

NARUC Operating Expense Category	% of Dues
Legislative Advocacy	20.38%
Legislative Policy Research	6.02%
Regulatory Advocacy	16.49%
Regulatory Policy Research	13.99%
Advertising	1.67%
Marketing	3.68%
Utility Operations and Engineering	11.31%
Finance, Legal, Planning and Customer Service	18.75%
Public Relations	7.71%
Total Expenses	100.00%

The Utility Reform Network testimony

That breakdown of expenses is known thanks to investigations and audits by the National Association of Regulatory Commissioners (NARUC). Indeed, for a time between the 1980's and early 2000's, NARUC investigated EEI's misuse of utility customer money for lobbying and public relations. This led to NARUC conducting annual audits of EEI's financial records. The result was a system of compromise where, based on NARUC's annual audits, regulators ruled that utilities could collect a significantly smaller portion of their EEI dues from ratepayers.

But over a decade ago, the NARUC audits stopped and consumer advocates have since had difficulty in fully understanding how EEI spends ratepayer money.

Nevertheless, consumer advocates and regulatory staff have continued to use the last-known NARUC audit when intervening to protect customers. For example, William Marcus, on behalf of The Utility Reform Network, proposed allocating 43.3% of EEI dues to shareholders rather than the 25% proposed by Pacific Gas & Electric in the 2014 general rate case. Marcus stated that "after a series of regulatory disallowances of significant parts of EEI dues across the country, EEI has decided on its own to stop issuing detailed information on its budget that had previously been published for decades under the auspices of NARUC."

TURN then presented the 2005 audited schedule of expenses defined by NARUC and argued that legislative and regulatory advocacy, advertising, marketing, and public relations be expensed to shareholders. The Commission agreed with TURN, preventing utility ratepayers from paying $300,000 of EEI dues.

TURN went a step further and proposed that EEI dues be completely disallowed from Southern California Edison's (SCE) 2015 general rate case. SCE proposed to charge ratepayers for $1.463 million for EEI dues (the total EEI invoice to SCE was $1.922 million). The utility pushed back and even EEI provided comments. The trade associate acknowledged that NARUC no longer requires it to provide detailed information, and said it still uses the NARUC definitions to compute the percentage of member dues used for lobbying, public relations, advertising, and marketing.

But despite SCE's rebuttal, plus the fact that EEI defended its spending – while admitting it no longer provides detailed information to NARUC – the Administrative Law Judge agreed with TURN and stated that "SCE has not shown it has removed all political or lobbying costs from its forecast." However, the judge declined to disallow all of SCE's EEI dues outright, instead adopting TURN's methodology from the PG&E 2014 general rate case and reducing SCE's forecast of EEI dues to $1 million from the total $1.922, a disallowance of 47.9%, which the Commission upheld in their vote.

EEI is also not the only political organization that receives money from utility ratepayers.

The report highlights examples of utilities proposing to include the American Gas Association, Nuclear Energy Institute, and the U.S. Chamber of Commerce, for example, in rate requests so that ratepayers pay for the utility's annual membership fees. Dominion and Duke Energy attempted to have ratepayers subsidize a portion of American Legislative Exchange Council dues and political party organizations in rate requests.

VIRGINIA ELECTRIC AND POWER COMPANY
CASE NO. PUE-2015-00027
FOR THE TEST YEAR ENDED DECEMBER 31, 2014
ADJUSTMENT TO REMOVE LOBBYING AND OTHER MISCELLANEOUS UNRECOVERABLE EXPENSES
STAFF ADJUSTMENT NO. ET-13

SUPPORTING DOCUMENTATION

ing Date	Vendor	Total DRS Amount	Pct to VP	Bill to VP	Narrative Description	Total Bill to VP	Amounts Booked Below-the-line	Difference
5/02/2014	AMERICAN COUNCIL OF YOUNG POLITICAL	10,000	51.68%	5,168	ACYPL CORP. PTNRSHIP PROG	5,168		5,168
5/29/2014	AMERICAN LEGISLATIVE EXCHANGE	7,000	51.68%	3,618	Private Sector - Washington Club			-
8/05/2014	AMERICAN LEGISLATIVE EXCHANGE	7,500	51.68%	3,876	VA Delegation Night Sponsorship	7,494	6,987	507
5/16/2014	COUNCIL OF STATE GOVERNMENTS	3,500	51.68%	1,809	2014 Annual Meeting in MD	1,809	1,687	122
6/10/2014	DEMOCRATIC ATTORNEYS GENERAL ASSN	15,000	51.68%	7,752	2014 Leadership Circle Membership	7,752		7,752
6/05/2014	DEMOCRATIC GOVERNORS ASSN	25,000	51.68%	12,920	DGA Virginia Policy Conference Sponsor			-
5/29/2014	DEMOCRATIC LEGISLATIVE CAMPAIGN	25,000	51.68%	12,920	DLCC 2014 Leadership Council Membership	12,920	12,048	872
5/20/2014	DEMOCRATIC MUNICIPAL OFFICIALS	10,000	51.68%	5,168	2014 DMO Advisory Board Membership	5,168	4,819	349
6/19/2014	REPUBLICAN ATTORNEYS GENERAL ASSN	15,000	51.68%	7,752	2014 Attorneys General Committee	7,752		7,752
6/02/2014	REPUBLICAN GOVERNORS ASSN	50,000	51.68%	25,840	2014 RGA Governors Board Membership	25,840		25,840
5/6/2014	VA CHAMBER OF COMMERCE	65	58.76%	38	VA Chamber Board Meeting May 2014	38	6	32
	Subtotal DRS to DVP							48,394

Table 1: Partisan Political Sponsorships and Donations

Acct.	Partisan Political Sponsorships/Donations		DEC Direct
921200	SOUTH CAROLINA SENATE DEMOCRATIC CAUCUS		$2,500
923000	SOUTH CAROLINA SENATE DEMOCRATIC CAUCUS		$5,000
921200	SOUTH CAROLINA SENATE REPUBLICAN CAUCUS		$2,500
921200	REPUBLICAN STATE LEADERSHIP COMMITTEE		$25,000
921200	SC BUSINESS AND INDUSTRY POLITICAL		$5,000
921200	SC HOUSE REPUBLICAN CAUCUS		$2,500
921200	SC SPORTSMENS CAUCUS		$1,250
921200	SOUTH CAROLINA HOUSE DEMOCRATIC CAUCUS		$2,500
921200	SOUTH CAROLINA LEGISLATIVE BLACK CAUCUS		$1,750
921200	PALMETTO LEADERSHIP COUNCIL *		$2,500
921200	NORTH CAROLINA LEGISLATIVE BLACK CAUCUS		$10,000
		Duke Donations	Allocation from Duke
921200	DEMOCRATIC GOVERNORS ASSOCIATION	$100,000	$55,650
921200	DEMOCRATIC GOVERNORS ASSOCIATION	$200,000	$112,600
921200	CONGRESSIONAL BLACK CAUCUS FOUNDATION	$50,000	$27,825
921200	CONGRESSIONAL HISPANIC CAUCUS INSTITUTE	$20,000	$11,130
921200	NATIONAL REPUBLICAN CLUB OF CAPITOL HILL	$10,000	$5,630
	Total DEC:		$273,335

* Political Action Committee associated with the Republican House Speaker in in South Carolina

Table 2: Lobbying and Public Policy Organizations

	Lobbying and Public Policy Organizations		DEC Direct
921200	CAROLINA BUSINESS COALITION INC		$100,000
921100	AMERICAN LEGISLATIVE EXCHANGE COUNCIL		$2,500
921200	AMERICAN LEGISLATIVE EXCHANGE COUNCIL		$5,000
921200	AMERICAN LEGISLATIVE EXCHANGE COUNCIL		$12,500
921200	SOUTH CAROLINA MANUFACTURERS ALLIANCE		$4,000
921200	SOUTH CAROLINA MANUFACTURERS ALLIANCE		$3,133
921200	NORTH CAROLINA CHAMBER		$3,000
921200	NORTH CAROLINA CHAMBER		$10,000
921200	SC SPORTSMENS CAUCUS		$1,250
921200	SC BUSINESS AND INDUSTRY POLITICAL		$5,000
921200	SOUTH CAROLINA MANUFACTURERS ALLIANCE		$2,610
923000	NATIONAL FEDERATION OF INDEPENDENT BUSINESS		$5,000
923000	NATIONAL FEDERATION OF INDEPENDENT BUSINESS		$5,000
		Duke Donations	Allocation from Duke
	BUSINESS INSTITUTE FOR POLITICAL ANALYSIS	$5,000	$2,783
	BUSINESS INSTITUTE FOR POLITICAL ANALYSIS	$5,000	$2,783
	Total DEC:		$164,557

Duke Energy proposed dues

Many utility customers are also paying for the activities of law firms hired by the industry to litigate environmental laws. The firms represent the "U Groups" – Utility Air Regulatory Group; Utility Water Act Group; Utility Solid Waste and Activities Group.

Kentucky Utilities Company
Case No. 2016-00370

Analysis of Account No. 930 - Miscellaneous General Expenses
For the 12 Months Ended October 31, 2016

GL Period	Vendor Name or Batch Name	Invoice Number or Journal Name	Description	Total Cost
201603	BRACEWELL AND GIULIANI LLP	03102016	ELECTRIC RELIABILITY COOR. COUNCIL	6,381.63
201603	CHARTWELL INC	30580	Chartwell Research Invoice 30580	8,637.30
201603	CYBERTECH INC	5034738	DUES	5,598.60
201603	FAA-WCS Spreadsheet A 27764 37911344	J079-0100-0316 Adjustment USD	KU NATF - Expense	9,141.18
201603	FAA-WCS Spreadsheet A 27764 37912427	J061-0110-0316 Adjustment USD	EEI Dues - Expense	33,941.63
201603	FAA-WCS Spreadsheet A 27764 37912427	J061-0110-0316 Adjustment USD	EEI UARG - Expense	13,441.45
201603	FAA-WCS Spreadsheet A 27764 37912427	J061-0110-0316 Adjustment USD	EEI USWAG - Expense (3 months)	11,475.00
201603	FAA-WCS Spreadsheet A 27764 37912427	J061-0110-0316 Adjustment USD	Steptoe & Johnson Expense	3,723.96
201603	HUNTON AND WILLIAMS LLP	102100548	MEMBERSHOP MONTHLY SERV	5,350.71
201603	HUNTON AND WILLIAMS LLP	102101840	SERVICES	5,797.42
201603	UNIVERSITY OF MISSOURI-FRI/PUD	161023	Financial Research Institute / Public Utility Division Advisory Board Appointment DUES	5,300.00
201604	BRACEWELL AND GIULIANI LLP	21645352	ELECTRIC RELIABILITY COOR. COUNCIL	6,378.47
201604	FAA-WCS Spreadsheet A 27764 38171515	J061-0110-0416 Adjustment USD	EEI Dues - Expense	33,941.63
201604	FAA-WCS Spreadsheet A 27764 38171515	J061-0110-0416 Adjustment USD	EEI UARG - Expense	13,441.45
201604	FAA-WCS Spreadsheet A 27764 38171515	J061-0110-0416 Adjustment USD	EEI USWAG - Expense	3,825.00
201604	FAA-WCS Spreadsheet A 27764 38171515	J061-0110-0416 Adjustment USD	Steptoe & Johnson Expense	3,723.96

Kentucky Utilities Company Rate Request – General Expenses 2016

g. Dues

American Coal Ash (ACAA)	13,416
Chartwell	22,140
Environmental Advocacy Group (Class of 85)	20,556
Coal Combustion Residuals (CCR)	18,736
Coal Utilization Research Council	21,577
Cross Cutting Issues Group (CCI)	15,095
Director Asset Mgmt - All UofL Research	15,000
Eastern Interconnection Planning Colaborative (EICP)	20,347
EEI Dues	422,368
IEEE Dues	4,472
Midwest Ozone Group Membership (MOG)	36,829
National Energy Policy Alliance (NEPA)	8,030
New Source Review (NSR)	18,736
North American Transmission Forum (NATF)	33,516
PIRA Energy Group	26,072
Southeastern Electric Exchange Membership Dues	5,000
Utility Air Regulatory Group Member (UARG)	182,002
Utility Solid Waste Activities Group (USWAG)	36,400
Utility Water Act Group-Membership (UWAG)	53,530
Waterways Council	16,344
Items below $4,000 and other items not budgeted in detail	245,819
Total Dues	1,235,984

Kentucky Utilities Company Dues – Test Year Ending June 2018

The Arizona Residential Utility Consumer Office said in Arizona Public Service's recent rate case, **"These groups [EEI, UARG, USWAG] represent the interest of electric generators ... donations and membership is purely voluntary, many of which are political in nature, and may not be necessary for the provision of utility services."**

The new Energy and Policy Institute report has several recommendations, but the most important is that public utility commissioners and their staff place the burden of proof on utilities to demonstrate the exact percentage of customer money provided to industry groups and other political organizations, including EEI, that actually benefits their ratepayers.

This is not a recommendation for commissioners to indiscriminately disallow all EEI dues, as certain EEI programs such as storm response preparedness may indeed be apolitical and provide a benefit to ratepayers. However, utilities should have to disclose the exact benefits that their political industry associations confer to ratepayers for each of their activities in detail; it is insufficient for utilities to file an annual invoice from an organization that notes the lobbying percentage, defined narrowly for tax purposes, as the only guidance for commissions to determine what should be charged to ratepayers.

[su_box title="Download report" box_color="#ffffff" title_color="#00000" radius="2"]**Paying for Utility Politics: How ratepayers are forced to fund the Edison Electric Institute and other political organizations** [/su_box]

TAGS: FRONT GROUPS / TRADE ASSOCIATIONS UTILITY POLITICS / POLITICAL INFLUENCE

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Exhibit No.:
Issue(s): *Amortizations of TOU Costs-opt-in and default, Amortization of transition costs, Greenwood solar allocation, EEI dues, PISA, FAC deferral, fuel expense, fuel inventories*
Witness: *Jared Giacone*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Direct Testimony*
Case No.: *ER-2024-0189*
Date Testimony Prepared: *June 27, 2024*

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

DIRECT TESTIMONY

OF

JARED GIACONE

EVERGY MISSOURI WEST, INC.,
d/b/a Evergy Missouri West

CASE NO. ER-2024-0189

Jefferson City, Missouri
June 27, 2024

** Denotes Confidential Information **

> Commission when GMO seeks to add the plant to its rate base. At that time, the Commission will expect GMO to propose a means by which those costs will be shared with KCP&L's customers who will also benefit from the lessons learned from this pilot project.

Q. Since the approval of the CCN in Case No. EA-2015-0256, has Staff recommended an allocation of the Greenwood Solar Facility as ordered by the Commission?

A. Yes. In the general rate cases filed by Evergy Missouri Metro and Evergy Missouri West following the Commission approval of the CCN, Staff recommended allocating the solar facility in Case Nos. ER-2016-0156, ER-2016-0285, ER-2018-0145, ER-2018-0146, ER-2022-0129 and ER-2022-0130.

Q. Please explain Staff's adjustments related to the Greenwood Solar Facility.

A. Consistent with previous cases, Staff recommends allocating the Greenwood Solar Facility capital costs (plant) and related depreciation reserve between Evergy Metro (Missouri and Kansas) and EMW based on the average number of customers reported in the annual reports provided to the Commission.

Q. Is this a rate base recommendation, an expense recommendation, or both?

A. This recommendation allocates the plant and accumulated reserve balances (rate base) and related depreciation expense.

<u>EDISON ELECTRIC INSTITUTE DUES</u>

Q. What is Edison Electric Institute ("EEI")?

A. According to the February 2024 Lobbying, Advocacy, and Other Expenditures report on the EEI website (see Schedule JG-d2), EEI was organized in 1933 and provides public policy leadership, strategic business intelligence, and essential conferences and forums. The report also states:

> EEI's member companies are among the most regulated companies in the country, and EEI engages on their behalf with federal and state legislators, regulators, and other policymakers through lobbying, advocacy, and regulatory proceedings, with the goal of providing customers with the affordable, reliable, and resilient clean energy they need and expect.

Q. Would a goal of providing customers with affordable, reliable, and resilient clean energy be a good thing for ratepayers?

A. That depends. EEI engages on behalf of the member utility companies, not the ratepayer. That means the lobbying, advocacy, and regulatory proceeding engagements that EEI does would above all else be in the best interest of the member utility companies. Allowing recovery of EEI dues in rates would make customers involuntary contributors supporting such lobbying, advocacy, and regulatory proceeding engagements that not all ratepayers might otherwise support.

Q. Has the Commission made any rulings in prior cases regarding EEI dues?

A. Yes. In Case Nos. ER-81-42, ER-82-66 and EO-85-185.

In Case No. ER-81-42, the Commission stated the following in its report and order:

> The rule has always been that dues to organizations may be allowed as operating expenses where a direct benefit can be shown to accrue to the ratepayers of the company. Conversely, where that sort of benefit does not appear, disallowance of the dues is required.

In Case No. ER-82-66, the Commission stated the following in its report and order:

> The Commission still believes the question is one of benefit to the ratepayer. In the instant case there appears to be some possible benefit, but until the Company [KCPL] can better quantify the benefit and the activities that were the causal factor of the benefit, the Commission must disallow EEI dues as an expense.

In Case No. EO-85-185, the Commission stated the following in its Report and Order:

> Historically, the Commission has disallowed EEI dues from rate case expense on the basis of EEI's involvement in lobbying. In 1981, the

> Commission adopted a benefit standard which would allow EEI dues if a direct benefit to the ratepayers could be shown…The Commission has since refined that standard to include not only a direct quantifiable benefit to the ratepayer, but also a method of allocating the expenses between the shareholders and the ratepayers once the benefits have been quantified…In the instant case, there is conflicting testimony on the amount of EEI resources devoted to lobbying. The Commission does not find it necessary to discuss whether or not EEI is devoted primarily to lobbying. The actual percentage of lobbying is not the controlling factor here. The question is whether the Company has quantified the EEI-derived benefits and allocated them between the shareholders and ratepayers…The determining factor is what proportion of those benefits should be allocated to the ratepayer as opposed to the shareholder. It is obvious that the interests of the electric industry are not consistently the same as those of the ratepayers…The Company has been informed in prior rate cases that it must allocate its quantified benefits from membership in EEI. That has not been done herein. Therefore, no portion of EEI dues will be allowed in this case.

Q. Has the Commission issued any Orders that allowed EEI dues as an expense since the Order from roughly 40 years ago?

A. Not to my knowledge. I reviewed Evergy Missouri West and predecessor company (i.e., GMO) rate cases going back to Case No. ER-2009-0090 which was filed in September 2008, and did not find any other instances where EEI dues were litigated before this Commission.

Q. Did any EMW witness sponsor direct testimony related to EEI dues or quantify their benefit to ratepayers?

A. No.

Q. Did EMW propose any adjustments related to EEI dues in their Direct filed revenue requirement model?

A. No. However, through my analysis, I determined that EMW booked 15% of the annual 2022 EEI dues to non-regulated utility operations, which means 85% of the annual 2022 EEI dues are included in regulated utility operation accounts. For the annual 2023 EEI dues, EMW booked 20% to non-regulated utility operations, which means 80% of the annual 2023 EEI dues are included in regulated utility operations.

Q. What is Staff's recommendation regarding EEI dues and fees included in the test year?

A. Consistent with previous EMW rate cases, Staff removed the amount of EEI dues and fees included in the test year expense from Evergy Missouri West's cost of service, consistent with prior Commission Report and Orders and since Evergy Missouri West did not identify direct quantifiable benefits to the ratepayer or explain their method of allocating the expenses between the shareholders and the ratepayers in direct testimony.

Q. Does Staff recommend disallowing all types of dues or donations made by Evergy Missouri West?

A. No. Please refer to the testimony of Sydney Ferguson for Staff's position on other types of dues and donations aside from EEI.

PLANT IN SERVICE ACCOUNTING

Q. What is the history of PISA?

A. PISA legislation became effective August 28, 2018, codified in § 393.1400 RSMo, with miscellaneous provisions related to it in § 393.1655 RSMo. Generally, the statute allows electric utilities to defer to a regulatory asset 85% of depreciation expense (return of investment) and return (return on investment) for the rate base additions except for new coal-fired generating units, new nuclear generating units, new natural gas units, or other additions that increased revenues by allowing service to new customer premises. The statute stated the regulatory asset was to be amortized over 20-years. The statute also outlined requirements of a five-year capital investment plan that must be provided to the Commission.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY UTILITIES COMPANY FOR AN ADJUSTMENT OF ITS ELECTRIC RATES, A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO DEPLOY ADVANCED METERING INFRASTRUCTURE, APPROVAL OF CERTAIN REGULATORY AND ACCOUNTING TREATMENTS, AND ESTABLISHMENT OF A ONE-YEAR SURCREDIT	)))))))))	CASE NO. 2020-00349

O R D E R

Kentucky Utilities Company (KU) is a jurisdictional electric utility that generates, transmits, distributes, and sells electricity to approximately 533,000 retail customers in all or portions of 77 Kentucky counties.[1] Its most recent general rate case for electric service was Case No. 2018-00294.[2]

BACKGROUND

On October 23, 2020, KU filed a notice of its intent to file on or after November 25, 2020, an application for approval of increases in its electric rates, including changes to its electric tariffs, a Certificate of Public Convenience and Necessity (CPCN) to deploy advanced metering infrastructure (AMI), approval of certain regulatory and accounting

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[1] *Annual Electric Report of Kentucky Utilities to the Public Service Commission for the Year Ending December 31, 2020* at 5. *See also* Application at 2.

[2] Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC Apr. 30, 2019).

(unpersuasively) in support of its objection, such as the opinions, conclusion or legal theories of KU's own counsel.

In this instance, we are unable to determine from the evidence of record the reasonableness of KU's forecasted legal fees. Therefore, the Commission finds that \$4.2 million[45] should be disallowed, which results in a revenue requirement reduction of \$4.3 million.

Edison Electric Institute (EEI) Dues

As part of its proposed rates in this matter, KU sought recovery of its anticipated EEI dues, net of a reduction identified by EEI that is reflective of "'lobbying and political activities' under section 162(e)" of the Internal Revenue Code (IRC).[46] In determining whether it should exclude or include a test-year amount of EEI dues, KU stated that it did not rely on any studies, but instead "relie[d] upon information provided on the invoices received" from the organization.[47] A letter KU provided from Emily Sanford Fisher, EEI's General Counsel and Corporate Secretary, explained that the amount identified by EEI for "lobbying and political activities" is calculated pursuant to Section 162(e) of the IRC. Section 162(e) of the IRC denies the ability of taxpayers to deduct certain lobbying and political expenditures. Ms. Fisher's letter went on to note than the activities identified by EEI under Section 162(e)'s "lobbying and political activities" categories "captures not only

[45] KU's Response to Commission Staff's Fifth Request for Information (filed Apr. 1, 2021), Item 2.

[46] KU's Response to Attorney General and KIUC's Joint Supplemental Request for Information (filed Feb. 19, 2021), Item 36, Attachment 2.

[47] KU's Response to the Attorney General and KIUC's First Request for Information (filed Jan. 22, 2021), Item 94.

federal lobbying, but also state and grassroots lobbying and political activity."[48] Finally, the letter noted that EEI does not separately account for activities that could be described as "regulatory advocacy, and public relations."[49]

Regulatory advocacy and public relations, in addition to legislative advocacy, are categories of costs incurred by EEI and passed onto KU for which the Commission has explicitly denied recovery from customers.[50] In that matter the Commission noted that KU's "description of regulatory advocacy appears to be a form of lobbying activity, which the Commission has not included for rate-making purposes in previous cases."[51] Based on our experience in this matter, we continue to hold this view.

In furtherance of its request to seek recovery of EEI dues, net of the amount removed pursuant to Section 162(e), KU argued that it "excluded the appropriate amount of unrecoverable dues based on the information provided from EEI, which is the same approach the Commission approved in Case No. 2020-00174 in January 2021." Although the Commission did approve a certain amount of EEI dues as recoverable from customers in Case No. 2020-00174, for the following three reasons, the Commission denies recovery of all test-year EEI dues in this matter. First, as KU should know, it has the affirmative burden of proof in this matter as to whether its proposed rates are fair, just and reasonable. Merely incurring, or expecting to incur, an expense is not itself a sufficient basis for the recovery of that expense from customers in rates that are fair, just and

[48] KU's Response to Attorney General and KIUC's Joint Supplemental Request for Information (filed Feb. 19, 2021), Item 36, Attachment 2.

[49] *Id*.

[50] Case No. 2003-00433, *An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company* (Ky. PSC June 30, 2004), Order at 51

[51] *Id*.

reasonable. If a utility's mere incurrence of a cost deemed it reasonable for recovery, half of the statutory scheme in KRS Chapter 278 would have no need to exist. A focus only on the amount of EEI dues *not* recoverable in rates misses the point. KU's affirmative burden is what level of EEI dues *is* recoverable from customers.

The second and third reasons for the Commission's denial of all EEI dues are related to the first, and both reasons are the result of intervening activities. Had both of the other two activities occurred prior to January 2020, the Commission would have denied all EEI dues for Kentucky Power. The first of these intervening actions is EEI's actual regulatory advocacy before the Commission, including in Kentucky Power's recent matter, Case No. 2020-00174. In two sets of written comments and twice in oral comments, agents of EEI advocated directly to this Commission the organization's interests, concern and suggestions regarding the Commission's implementation of rates pursuant to Senate Bill 100, An Act Related to Net Metering.[52] This case also deals with SB 100.

The letter from Ms. Fisher on behalf of EEI provides more explanation of what is and what is not included in the Section 162(e) adjustment than the Commission has received before. Based on the explanation in the EEI letter, coupled with EEI's actual regulatory advocacy, the Commission finds that EEI is engaging in activity the Commission has previously denied recovery of expenses for and, and for which KU seeks recovery of in this matter. The newly-explained information in Ms. Fisher's letter, including the explanation of what *is not* included in the amount excluded by EEI, is the

[52] *See* Case No. 2020-00174, *Electronic Application of Kentucky Power Company,* November 13, 2020 letter from Philip D. Moeller, Public Comments; April 22, 2021 letter from Shelby A. Linton-Keddie, Public Comments.

third basis for denial of the test-year EEI amount. Without any evidence as to the amounts included in the EEI dues related to the inappropriate activities discussed above, the Commission finds KU has not met its burden of proof as to the reasonableness of recovery of any of the proposed EEI dues. The Commission's determination is not a finding that the remainder of the EEI dues is reasonable. As previously noted, KU has the affirmative burden of proof as to the reasonableness of expenses. Merely identifying a portion of costs incurred that a utility does not seek recovery of does not meet the threshold of reasonableness as to the remainder of expenses. Given their public-facing activities, this is even more so for organizations that require dues. Therefore, the Commission has reduced jurisdictional miscellaneous expenses by $0.4 million,[53] which results in a revenue requirement decrease of $0.5 million.

<u>Other Adjustments to Stipulation</u>

The Commission will reduce the amortization of rate case expense to reflect KU's actual expenses, which results in a revenue requirement reduction of $0.05 million.[54] Finally, the stipulated revenue requirement reduction related to the forecasted long-term debt rate appears to be based on the adjustment recommended by the Attorney General and KIUC's witness Lane Kollen, which used an adjusted rate base instead of capitalization.[55] The Commission finds that the adjustment should be based on capitalization, consistent with the reduction of the ROE, which results in a revenue

[53] Application, Schedule F-1.

[54] *See* KU's Supplemental Responses to Commission Staff's First Request for Information (filed Feb. 24, 2021), Item 14d.

[55] *See* Direct Testimony of Lane Kollen at 103–104.

ORDER NO. 23-384

ENTERED Oct 26 2023

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 461

In the Matter of AVISTA CORPORATION, dba AVISTA UTILITIES, Request for a General Rate Revision.	ORDER

DISPOSITION: FIRST PARTIAL STIPULATION AND SECOND STIPULATION ADOPTED.

I. SUMMARY

In this order, we address the request for a rate revision filed by Avista Corporation, dba Avista Utilities, and the two stipulations that propose to resolve all issues raised in these proceedings, including the revenue requirement, cost of capital, rate spread and design, line extension allowances, equity, and low-income programs.

We adopt the first partial stipulation and the second stipulation resolving all issues. As adopted, these stipulations result in an increase to Avista's billed revenue requirement of $6,944,000, representing a 4.7 percent increase from the company's previous rates.

II. BACKGROUND AND PROCEDURAL HISTORY

On March 1, 2023, Avista filed Advice No. 23-01-G, a request for a general rate case and revised tariff sheets, with an effective date of April 1, 2023.[1] Avista requested an annual jurisdictional revenue increase of $10.991 million or approximately 7.4 percent. Avista's initial filing was developed using a forecast for a test year starting January 1, 2024, and ending December 31, 2024 (Test Year). Avista's filing also includes information on a historical base year from October 1, 2021, and ending September 30, 2022 (Base Year), and adjustments to historical information to reflect the forecasted Test Year. Avista states that after accounting for historical restating and forecasted adjustments, the rate of return (ROR) for the company's Oregon jurisdictional operations for the Test Year is 5.19 percent, and for the Base Year was 5.76 percent on a normalized basis. Both are

[1] Avista proposes revisions to the following tariff sheets: 410, 420, 424, 425, 439, 440, 444, 456.

j. UM 2267 Pension Loss Deferral

The parties to the second stipulation agree to support Avista's request for a deferral for a pension loss pending in docket UM 2267.

3. Party Statements in Support of Settlement

Avista asserts that the second stipulation strikes a reasonable balance between Avista's customers and company itself on revenue requirement, rate spread and design issues, line extension policy, CPP costs and tariffs, meter testing, and other issues raised over the course of these proceedings. Avista maintains that the agreement is a compromise among interests and represents give and take. Avista argues that the agreement is in the public interest and should be approved.

Staff argues that the stipulation is a balanced compromise, results in fair outcomes, has cost control and equitable pricing, addresses inflation, improves customer benefits, ensures that the burden of costs is distributed reasonably among different customer groups, underscores transparency and collaboration, and aligns with the public interest by promoting just, fair, and reasonable rates. In particular, Staff highlights the stipulation provisions requiring Avista to change its meter testing and replacement operations and to change its basic charge rates for single-family and multi-family residences. Staff also notes that the second stipulation includes the use of the averages of monthly averages rate base calculation, which was the long-standing method used by the Commission until approximately ten years ago. Staff argues that this adjustment is important because the method more accurately reflects the rate base value over the Test Year.

CUB argues that the second stipulation furthers the public interest because it contains significant protections for residential customers, including Avista's agreement to phase out its line extension allowance policy. CUB asserts that phasing out the line extension allowance policy ensures that Avista customers are immediately diminishing their subsidies to help expand natural gas infrastructure, which CUB argues is significant given the CPP requirement that all new customer emissions must be completely offset.[20] CUB maintains that the adjustments to the revenue requirement result in a much more reasonable increase for Avista's residential customers to bear.

AWEC states that it supports the second stipulation because it results in an overall reasonable outcome and decreases the original gas revenue requirement increase requested by Avista by $3.831 million. Avista asserts that it also supports the second stipulation because it considers Avista's cost of service study, which shows several rate

[20] Stipulation Parties/200, Muldoon-Schultz-Miller-Garrett-Mullins-Plummer-Ryan/25-26.

schedules are above parity, and because Avista agrees not to file a CPP tariff rider until 2024 or actual costs are incurred.

Sierra Club and Climate Solutions asserts that the second stipulation is consistent with the public interest for several reasons. Sierra Club and Climate Solutions argue that the line extension allowance phase out is consistent with meeting state climate goals and ensuring that rate payers are not burdened with stranded assets as customers switch away from methane gas service. Sierra Club and Climate Solutions also argue that Avista's commitment to increase funding for the low-income weatherization program, address consistent underutilization of existing weatherization funds through the Equity Advisory Group, to modify arrearage management plan enrollment practices, and reduce basic charges for multi-family residential customers are all important steps to address the energy burdens in a high-burden area while reducing gas demand and bill costs. Sierra Club and Climate Solutions maintain that Avista's commitment to incorporate meaningful NPAs, including electrification, into its resource planning and decision making will help ensure a smooth and successful energy transition that reduces customer shocks and avoids unnecessary system expansion. Sierra Club and Climate Solutions assert that it is in the public interest for shareholders to shoulder political expenses that do not align with state policy or the public interest, and this settlement removes costs associated with Avista's CPP litigation and gas industry association dues.

V. DISCUSSION

We have reviewed the terms of the stipulations and the joint testimony filed in support of the stipulations, and we find that the first partial stipulation and the second stipulation together result in just and reasonable rates. Based on the evidence presented, we find the terms of the stipulations to be reasonable. The parties raised a number of important and complex issues in these proceedings, and we find that the proposed adjustments and other terms are supported by sufficient evidence, appropriately resolve the issues in this case, and contribute to an overall settlement in the public interest. We adopt the first partial stipulation and the second stipulation in their entirety.

As part of the second stipulation, the parties agreed to support Avista's request for a deferral in docket UM 2267. In Staff's testimony, Staff had proposed that the Commission address the pension deferral as part of this rate case and recommended that the Commission approve the deferral requests.[21] It is not clear whether the parties intended for the Commission to approve and resolve docket UM 2267 as part of this docket, but docket UM 2267 has not been combined with this docket and we do not

[21] Staff/1100, Zarate/6-7.

0000210704

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

Arizona Corporation Commission
DOCKETED
MAR 5 2024
DOCKETED BY

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, AND TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-22-0144 DECISION NO. 79293 **OPINION AND ORDER**

DATES OF HEARING:	August 10-11, 14-18, 21-23, 25, and 28-31; September 1, 5-8, 11, 13, and 15; and October 3, 2023
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Sarah N. Harpring
APPEARANCES:[1]	Melissa M. Krueger, Jeffrey S. Allmon, Scott Hesla, Theresa Dwyer, and Lauren Ferrigni, PINNACLE WEST CAPITAL CORPORATION, on behalf of Arizona Public Service Company; Nicholas J. Enoch, Morgan L. Bigelow, and Clara S. Bustamante, LUBIN & ENOCH, PC, on behalf of the International Brotherhood of Electrical Workers, AFL-CIO Locals 387, 640, and 769; Justina A. Caviglia, PARSONS BEHLE & LATIMER, on behalf of Walmart, Inc.; Patrick J. Black and Kaitlyn Smith, FENNEMORE, on behalf of Freeport Minerals Corporation; Kurt J. Boehm, BOEHM, KURTZ & LOWRY, on behalf of Kroger Co.; CPT Marcus Duffy, MAJ Leslie Newton, CPT Ashley George, and Thomas Jernigan, U.S. AIR FORCE, on behalf of the Federal Executive Agencies;

[1] Intervenor Brookfield Renewables Trading and Marketing LP indicated though a filing that it would not participate in the hearing. Intervenors Tucson Electric Power Company and Arizona Competitive Power Alliance requested and were granted excusal from participating at the prehearing and hearing.

Thorvald A. Nelson and Austen W. Jensen, HOLLAND & HART LLP, on behalf of the Arizona Large Customer Group;

Nathan D. Schott, GUST ROSENFELD, P.L.C., on behalf of the Joseph City Unified School District;

Todd F. Kimbrough, BALCH & BINGHAM, LLP, on behalf of the Navajo Nation;

Amy Mignella, HOPI TRIBE OFFICE OF GENERAL COUNSEL, on behalf of the Hopi Tribe;

Chanele N. Reyes, ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST, on behalf of San Juan Citizens Alliance, Tó Nizhoni Áni, Diné C.A.R.E., Black Mesa Trust, Southwest Energy Efficiency Project, Western Resource Advocates, and Vote Solar;

George Cavros, WESTERN RESOURCE ADVOCATES, on behalf of Western Resource Advocates;

Timothy M. Hogan, ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST, on behalf of Wildfire, Arizona School Boards Association, Arizona Association of School Business Officials, and Arizona School Administrators;

Gregory M. Adams, RICHARDSON ADAMS, PLLC, on behalf of Calpine Energy Solutions, LLC;

Court S. Rich, ROSE LAW GROUP, PC, on behalf of NRG Energy, Inc.; EVgo Services LLC; Tesla, Inc.; and Arizona Solar Energy Industries Association and Solar Energy Industries Association;

Autumn T. Johnson, TIERRA STRATEGY, on behalf of Arizona Solar Energy Industries Association and Solar Energy Industries Association;

Garry D. Hays, LAW OFFICES OF GARRY D. HAYS, P.C., on behalf of Arizona Solar Deployment Alliance;

Patrick Woolsey and Nihal Shrinath, SIERRA CLUB ENVIRONMENTAL LAW PROGRAM, on behalf of Sierra Club;

Kristin Nelson, pro se;

John B. Coffman, JOHN B. COFFMAN LLC, and Ayensa Milan, CIMA LAW GROUP, PC, on behalf of AARP;

Daniel Pozefsky, Chief Counsel, and Jon McCarty, Attorney III, RESIDENTIAL UTILITY CONSUMER OFFICE, on behalf of the RESIDENTIAL UTILITY CONSUMER OFFICE; and

Maureen Scott, Deputy Chief of Litigation and Appeals, and Samantha Egan, Kate Kane, and Carolyn Keist-Gilbert, Staff Attorneys, LEGAL DIVISION, on behalf of the Arizona Corporation Commission's Utilities Division.

RUCO

Although RUCO did not address the issue of D&O insurance in its Brief, the 50% reduction is consistent with RUCO's adjustment made in this matter. (Ex. RUCO-1 at 24-27.)

Staff

Staff states that APS now accepts the Staff adjustment to remove 50% of D&O insurance expense, which results in a reduction of $516,515 and causes the expense to be shared equally between shareholders and ratepayers. (Staff Br. at 13; *see* Ex. S-24 at 28, Att. RCS-2 at Sched. C-7; Ex. APS-22 at 4.) Staff states that Staff made the same adjustment in APS's 2011, 2016, and 2019 rate cases.[193] (Staff Br. at 13; Ex. S-18 at 45.)

APS Response

APS did not address this issue further in its Responsive Brief.

Resolution

APS's proposal to have D&O insurance costs shared 50/50 between shareholders and ratepayers, which is consistent with RUCO's and Staff's recommendations, is just and reasonable. This adjustment reflects the Commission's understanding that D&O insurance is necessary for APS to obtain qualified individuals to serve in director and officer roles.

6. Industry Association Dues

APS Proposal

APS proposes to recover $3,881,031 in adjusted TY industry association dues, which include but are not limited to dues paid to the Electric Power Research Institute ("EPRI") and the Edison Electric Institute ("EEI"). (APS Br. at 33; *see* Ex. RUCO-1 at ex. FWR-18.) APS asserts that the proposed amount does not include any monies spent for lobbying or other legislative or regulatory advocacy. (APS Br. at 33; Tr. at 1972; *see* Ex. RUCO-1 at ex. FWR-18 at 6, ex. FWR-19.) APS argues that there is no evidence the association dues expenses are imprudent or unreasonable and, further, that APS's memberships are helpful to APS and its customers because they allow APS to remain current

[193] Mr. Smith noted in his testimony that the 2011 and 2016 rate cases resulted in settlement agreements and that the issue was not addressed in those settlement agreements. (Ex. S-18 at 45.) As noted above by FEA, Staff's adjustment was not adopted in Decision No. 78317.

on national industry innovations and standards and thereby to improve and innovate service to its customers. (APS Br. at 33; Tr. at 1971-1973.) APS asserts that the full amount of industry association dues is prudently incurred and should be allowed and that any disallowance of industry association dues expense is not warranted by the evidence and would be contrary to law. (APS Br. at 33.)

RUCO

RUCO recommends that APS be allowed to recover only 50% of the industry association dues, pointing out that the Commission adopted its position on the issue in the 2019 rate case and also allowed recovery of only approximately 50% of Edison Electric Institute ("EEI") dues in a 2009 rate case for UNS Electric, Inc. (RUCO Br. at 33; *see* Ex. RUCO-7 at 196-197; Decision No. 71914 (September 30, 2010) at 24-25.)

Staff

Staff did not make an adjustment in its schedules for this expense item and did not address this issue in its Brief or Responsive Brief. (*See* Ex. S-73.)

APS Response

APS characterizes RUCO's recommendation as arbitrary and punitive and points out that RUCO has acknowledged the benefits APS's involvement with these associations provide to both ratepayers and shareholders. (APS Br. at 33; Tr. at 1971-1973; *see* Ex. RUCO-1 at 23.)

Resolution

APS is facing a set of circumstances that have required APS and will require APS to be nimble and innovative to ensure reliable, safe, and affordable service to its customers—sustained population growth in its service area,[194] increased demand for load to serve the greater electrification of things by its existing customers (such as through increased adoption of electric vehicles),[195] extremely high (unprecedented) demand for load to serve new extra-high load factor ("XHLF") customers,[196] additional customer-sited distributed generation ("DG") on the grid,[197] record-setting extreme heat events and more severe storms,[198] impending closure of a baseload coal plant and a planned exit from

[194] *See, e.g.,* Ex. APS-33 at 16; Ex. APS-2 at 2, 16.
[195] *See, e.g.,* Ex APS-8 at 12; Ex. APS-2 at 18; Tr. at 408.
[196] *See, e.g.,* Ex. APS-12 at 11-12; Tr. at 206-207, 210, 288-290.
[197] *See, e.g.,* Ex. APS-24 at 18-19.
[198] *See, e.g.,* Ex. APS-2 at 18.

another,[199] and a lack of extra capacity on the western energy market.[200] To meet these challenges, APS needs to be well informed concerning the technologies that are available, what has and has not been reliable and efficient for other utilities, and what technologies may be on the horizon. APS's involvement in industry associations, which provides it with information that is not readily available from other sources, will support it in facing these circumstances. The Commission finds that it is just and reasonable to allow APS full recovery for its proposed EPRI association dues expense and to disallow the TY EEI membership dues totaling $1,126,241.[201]

7. Depreciation & Net Salvage Adjustment

APS Proposal

APS proposes an adjusted TY depreciation and amortization expense of $723.314 million. (APS Br. at 23, Att. B at Sched. C-1.) In calculating depreciation, APS used a straight-line method and the depreciation rates in the 2019 Depreciation Study completed by Dr. White for the 2019 rate case. (APS Br. at 23; Ex. APS-20 at 23; Ex. APS-21.) APS states that Staff accepts APS's analysis except as to retirement and negative net salvage costs and that RUCO accepts APS's analysis but disallowed depreciation and amortization expense on the depreciable plant RUCO excluded from PTYP. (APS Br. at 23; Ex. S-18 at 73-76; Ex. RUCO-1 at 19.)

APS supports recovering retirement and negative net salvage over the life of the asset using the straight-line method, which means that an asset will be depreciated equally each year of its depreciable service life. (APS Br. at 24; *see* Ex. APS-20 at Att. EAB-01DR at 6.) APS states that it has used the straight-line method for retirement and negative net salvage for decades, that the Commission has approved it in other rate cases, and that it is used by the majority of utility commissions in the U.S. (APS Br. at 24; Ex. APS-18 at 6, Att. RW-02RB at 12; Ex. RUCO-7 at 208; *see* A.A.C. R14-2-102(B)(3)[202].)

APS argues that the Statement of Financial Accounting Standards No. 143 ("SFAS 143") is a financial accounting standard used to determine the amount of an asset retirement obligation to be

[199] *See, e.g.*, Tr. at 1370-1371.
[200] *See, e.g.*, Ex. APS-2 at 19.
[201] *See* Ex. RUCO-1 at ex. FWR-18.
[202] A.A.C. R14-2-102(B)(3) states: "The cost of depreciable plant adjusted for net salvage shall be distributed in a rational and systemic manner over the estimated service life of such plant."

California prevents utility from paying EEI dues with ratepayer funds

The decision shows regulators pushing back against allowing utilities to force their ratepayers to fund lobbying including anti-solar efforts.

MAY 21, 2019 **CHRISTIAN ROSELUND**

POLICY CALIFORNIA MICHIGAN

Image: California PUC

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If there has been one organization that has been a central force in fighting the policies and rates that enable rooftop solar, it is the Edison Electric "utility death spiral", and arguing that among other factors, customer-sited distributed generation represents an existential threat to its member utilities.

Since then, utilities across the country have been acting as though rooftop solar is an existential threat, and doing whatever they can to stop it – including attempting to dismantle net metering, imposing discriminatory charges on their customers who adopt solar, and designing rates to claw back more money from customers who go solar, and/or kill the rooftop solar market outright.

But while corporations using their money to advocate for policies that favor them isn't widely questioned on its own merits, utilities aren't any company selling a service, and utility customers don't have the same kind of choices that other consumers have. You can choose to buy an Apple or an Android phone, or if you are a Luddite no cell phone at all. But if you have electricity service to your home or business, even if you live in a region with a choice of supplier, a portion of your bill still goes to the local utility.

"EEI's budget is mostly made up of utility member dues that electric ratepayers are forced to pay," explains Energy and Policy Institute Research Director Matt Kaspar.

Another difference is that by advocating to undermine the economics of rooftop solar, utilities are advocating against their own customers who choose to lessen their dependence upon them. And often they are doing so with the guidance of EEI, which has worked to stop distributed solar across the nation.

California pushes back

So far, regulators around the nation have largely been allowing utilities to recover most of their dues for what is described as a "beneficial" service from ratepayers. However last week the California Public Utilities Commission (CPUC) decided not to allow utility Southern California Edison (SCE) to make its customers pay these dues, as part of its ruling on its rate case. As stated in the proposed decision adopted on May 16:

> *SCE has failed to present supporting evidence which would enable us to determine how much EEI's beneficial services should cost ratepayers. We find SCE has not met its burden to establish any portion of the EEI dues are recoverable from ratepayers.*

SCE had asked for ratepayers to pay for more than 3/4 of the cost of $1.9 million in EEI dues, but this figure was less than the organization recommends. The utility had submitted the EEI invoices as its evidence that it was reasonable to shift this portion of the dues to its customers.

In the past CPUC has allowed such spending, and in other cases The Utility Reform Network (TURN) has merely argued that utilities be required to submit a smaller portion of customer money in the mix. As such, the SCE ruling marks a break with tradition.

Michigan sides with DTE (again)

The results were very different earlier this month in Michigan. On March 6 an administrative law judge recommended that regulators reject DTE's proposal and not allow the utility to spend $1.3 million of the money it received from ratepayers on dues. However the Michigan Public Service Commission's final ruling rejected this advice, and went ahead and gave DTE the green light.

One of the issues brought up in Michigan was the portion of EEI spending that goes to lobbying, as opposed to other activities such as workforce education and training. Witness Karl Rábago, the executive director of the Pace Energy and Climate Center, noted the lack of transparency at the organization, and that there have been no recent audits that show just how much money is spent on lobbying.

This is the latest in a series of decisions where the Michigan Public Service Commission has sided with DTE, including approving a mammoth gas plant while commissioners admitted that they had not seriously considered other alternatives.

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CHRISTIAN ROSELUND

Christian Roselund served as US editor at pv magazine from 2014 to 2019. Prior to this he covered global solar policy, markets and technology for Solar Server, and has written about renewable energy for CleanTechnica, German Energy Transition, Truthout, The Guardian (UK), and IEEE Spectrum.

More articles from Christian Roselund

roselund@pv-magazine.com

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John REPLY

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NEWS: BUSINESS

Xcel Energy ordered to remove investor relations and executive salaries from costs passed on to Colorado consumers

Colorado regulators are putting into play a law passed in 2023 in response to a 52% hike in winter gas bills

Mark Jaffe
4:14 AM MST on Nov 5, 2024 Updated 11:22 AM MST on Nov 7, 2024

Xcel Energy's lower downtown location is seen on Feb. 15, 2022, in Denver. (Olivia Sun, The Colorado Sun via Report for America)

Colorado utility regulators — using the mandates in a 2023 law — are looking to carve lobbying fees, trade association dues and investor relations costs from Xcel Energy rate requests. In a current gas rate case, more than $775,000 in such costs were disallowed.

The figure in the future could be a lot higher based on the Colorado Public Utilities Commission decision in October ordering Xcel Energy to remove all investor relations costs — including a portion of executive salaries — from its calculations of costs passed on to customers.

“There is an inherent tension between customer benefits and investor benefits,” said Joseph Pereira, deputy director of the Colorado Office of the Utility Consumer Advocate, which represents residential and small commercial customers before the PUC. “Customers shouldn’t pay to boost the share price.”

In the wake of **soaring utility bills** in the 2022-23 winter, when the average gas bill rose 52% for residential customers of Xcel Energy’s subsidiary Public Service Company of Colorado, the legislature convened a special committee to investigate rates.

The result of that inquiry was **Senate Bill 291**, which **aims to avoid the bill shock** customers experienced. It also took aim at 15 types of expenses that should not be paid by customers, such as a portion of board of directors’ compensation, travel and entertainment expenses.

The commission is still working on setting the rules to comply with Senate Bill 291. The PUC is using interim rules for the gas rate case.

Xcel Energy was seeking a $172 million increase in gas rates. The PUC granted the company a $130 million increase, with a $15 million adjustment for depreciation expenses, raising the average monthly household bill 7.7% or $4.57 and small commercial bills by $17.49.

Colorado customers like people everywhere in the county are concerned about how high their energy bills have become,” said David Pomerantz, executive director of the nonprofit **Energy and Policy Institute**. “Underlying a lot of those concerns, is how politically powerful utilities are and how they are paying for that with money that’s not theirs.”

3 other states keep corporate costs from being charged to consumers

Connecticut, New Hampshire and Maine have passed laws similar to Colorado, and bills have been filed in **11 other states seeking to limit lobbying** and other charges, Pomerantz said.

In a recent Xcel Energy gas rate case in Minnesota, the Citizens Utility Board, a nonprofit consumer advocate, challenged the dues paid to the American Gas Association, a trade group, and the Chamber of Commerce, noting that those charges are excluded by statute in Colorado.

In a settlement agreement, Xcel Energy agreed to remove the dues from customer charges.

“Colorado is a little ahead of the game compared to other states,” Pomerantz said. “They and Connecticut were the first states to take a whack at this.”

While there is a long list of costs to be excluded, in the gas rate case, the commission honed in on four: lobbying expenses, investor relations expenses, trade association dues and attorney and consultant fees in rate cases.

Xcel Energy in its filings maintained that many investor costs are required, such as U.S. Securities and Exchange Commission filings, the provision of disclosures to current and potential investors as required by law, and listing fees, including those required by stock exchanges.

“These costs for the company are unavoidable costs and are by definition prudent since they are required by law, regulation, and/or stock exchanges that give the company access to external capital,” Xcel Energy said in a filing.

The PUC, however, said that prohibition in Senate Bill 291 is “unambiguous.”

“We therefore direct Public Service to remove from its revenue requirement calculations all investor relations expenses,” the commission said.

But what that figure is and how to calculate it have yet to be determined since it will rely on computing the time spent and salaries of all employees involved in investor relations, all the way up to top executives and the CEO.

“You know, a big part of their responsibility is investor relations,” Commissioner Tom Plant said during one meeting reviewing the rate case. “It’s maximizing shareholder value. It’s maximizing return to investors.”

“And what we know from the statute is that that is not a role that the legislature has said is attributable to ratepayers,” Plant said. “But we don’t know what that line is, we don’t know where we draw that line.”

In its decision the commission said “the company shall provide a full accounting of time spent by the company’s employees, including executives, in raising capital and any other aspects of investor relations.”

The commission did remove $142,000 in investor-related expenses from the rate case.

Xcel is the top spender on lobbying in Colorado

The decision was similar regarding lobbying. Xcel Energy has consistently been **the top spender on lobbying** at the Colorado statehouse. In the 12 months ending in July, it spent about $297,000 on lobbying.

Those expenditures for registered lobbyists are not included in charges to customers, but under questioning from Commissioner Megan Gilman, Xcel Energy executives said there is no accounting for the company employees who spend time in lobbying activities.

“From the executive level on down, there are individuals within the organization directing, strategizing, analyzing potential proposed or enacted legislation and trying to influence those outcomes on behalf of the company,” Gilman said. “And so, it seems to me, we’re likely missing quite a bit of information here that would be helpful and necessary to ensure compliance with 291.”

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Xcel gas bills drop almost 12% for the rest of 2024 as wholesale prices remain low

4:20 AM MDT on Sep 18, 2024

Xcel’s grid, facing growing power demands, to get help from a bill racing through the legislature

4:14 AM MDT on May 1, 2024

A record amount was spent lobbying Colorado’s legislature and state government last year

4:05 AM MDT on Aug 10, 2023

The PUC ordered Xcel Energy to update its 2023 annual report to show the portion of total compensation for company employee lobbying and to track and report those expenses for 2024 and each year through the next rate case.

Finally, the commission told the company to track employee lobbying expenses from Jan. 1, 2024, on in a separate account to determine in the next rate case whether a refund is due to customers.

Xcel Energy also argued that in addition to lobbying and political activities the American Gas Association provides educational and professional activities and that part of its dues to the trade group should be allowed. The commission rejected the argument and the full $503,000 in dues was removed.

Xcel did not comment for this story, but provided a statement it made about the commission's rulemaking to enact Senate Bill 291 noting that "the vast majority of expenses the law required be excluded from rates has historically been excluded from Xcel Energy Colorado customer rates."

The cost of attorneys and consultants have long been paid for by customers in rate cases. "Such expenses are a legitimate cost of providing utility service," the commission said.

Xcel Energy sought $1.6 million in legal and consulting fees to be put into rates. The PUC staff in a filing said that was an improvement over the $2.2 million the company requested in its 2022 gas rate case, but the staff recommended a $1.3 million cap on expenses.

The company spent $260,000 on consultants and the commission split that cost between the company and customers with each responsible for half, leaving Xcel Energy able to recover $1.47 million in costs.

While these are small-dollar battles in a $171 million rate case, Pereira, the utility consumer advocate, said they are important in changing the dynamics in the legislature and at the PUC.

"Maybe Xcel decides it doesn't want to pay for 10 people lobbying," he said. "Maybe it changes how they approach a rate case."

When it becomes clear how much Xcel Energy is spending stockholders may also have a say. "There are monetary savings for customers but also a quantifiable way for shareholders to decide if they want to pay for those activities," Pereira said.

"SB-291 has to be the most influential customer-focused bill we've seen in a decade or more," Pereira said.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for generation and distribution of electricity and for other relief.	U-21870 ALJ Jonathan F. Thoits

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PROOF OF SERVICE

I, Mark N. Templeton, certify that an electronic copy of the **Accompanying Exhibits UCC-75 to UCC-97** (Part 6 of 6) **for the Direct Testimony of Sergio Cira-Reyes on Behalf of Urban Core Collective** was served on the following on September 30, 2025.

Name/Party	E-mail Address
Administrative Law Judge	
Jonathan F. Thoits	thoitsj@michigan.gov
Consumers Energy Company	mpsc.filings@cmsenergy.com
Gary A. Gensch Jr.	gary.genschjr@cmsenergy.com
Anne M. Uitvlugt	anne.uitvlugt@cmsenergy.com
Evan B. Keimach	evan.keimach@cmsenergy.com
Mark R. Ruszkiewicz	mark.ruszkiewicz@cmsenergy.com
Spencer A. Sattler	spencer.sattler@cmsenergy.com
Bret A. Totoraitis	bret.totoraitis@cmsenergy.com
Kelly Hall	kelly.hall@cmsenergy.com
Michigan Attorney General	
Celeste R. Gill	gillc1@michigan.gov
Lucas Wollenzien	wollenzien1@michigan.gov
Amanda Churchill	ag-enra-spec-lit@michigan.gov
Sebastian Coppola	sebcoppola@corplytics.com
Michigan Public Service Commission	
Daniel E. Sonneveldt	sonneveldtd@michigan.gov
Amit T. Singh	singha9@michigan.gov
Nicholas Q. Taylor	taylorn10@michigan.gov
Alena M. Clark	clarka55@michigan.gov
Adam M. Cozort	cozorta1@michigan.gov
Michael J. Orris	orrism@michigan.gov
Mike Byrne	byrneM@michigan.gov
Bill Stosik	stosikb@michigan.gov
David Chislea	chislead@michigan.gov
Bob Nichols	nicholsb1@michigan.gov
Nick Revere	reveren@michigan.gov
Lori Mayabb	mayabbl@michigan.gov

Citizens Utility Board of Michigan, Michigan Environmental Council, Natural Resources Defense Council, Sierra Club Christopher M. Bzdok Holly L. Hillyer Tracy Jane (TJ) Andrews Natasha Fowles Sean Clark Tanya Stasio Jordan Burt Tyler Comings Caroline Palmer John Liskey Matt Bandyk Rick Bunch Julielyn Gibbons Jackson Neme	 chris@tropospherelegal.com holly@tropospherelegal.com tjandrews@tropospherelegal.com natasha@tropospherelegal.com sean@tropospherelegal.com tanya.stasio@eaclinic.org Jordan.burt@aeclinic.org Tyler.comings@aeclinic.org cpalmer@synapse-energy.com john@liskeypllc.com mbandyk@synapse-energy.com rbunch@5lakesenergy.com jgibbons@5lakesenergy.com jackson@tropospherelegal.com
Great Lakes Renewable Energy Association (GLREA) Don L. Keskey Brian Coyer Carol Dane	 donkeskey@publiclawresourcecenter.com bwcoyer@publiclawresourcecenter.com cdane@publiclawresourcecenter.com
Walmart, Inc. Melissa M. Horne	 mhorne@hcc-law.com
Association of Businesses Advocating Tariff Equity Michael J. Pattwell Benjamin J. Holwerda Stephan A. Campbell James Dauphinais Lauren Degnan Christina Hildebrandt Jessica York	 mpattwell@clarkhill.com bholwerda@clarkhill.com scampbell@clarkhill.com jdauphinais@consultbai.com ldegnan@clarkhill.com childebrandt@consultbai.com jyork@consultbai.com
Heston Hemlock Semiconductor Operations, LLC and Solar Technology LLC Jennifer U. Heston	 jheston@fraserlawfirm.com
The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar Daniel H.B. Abrams Katie Duckworth Alondra Estrada Katie Toolan	MPSCDocket@elpc.org dabrams@elpc.org kduckworth@elpc.org aestrada@elpc.org ktoolan@elpc.org

The Kroger Company Kurt J. Boehm Jody Kyler Cohn Michael L. Kurtz Justin Bieber	 kboehm@bkllawfirm.com jkylercohn@bkllawfirm.com mkurtz@bkllawfirm.com jbieber@energystrat.com
Michigan Cable Telecommunications Association Sean P. Gallagher Jon Austin	 sgallagher@fraserlawfirm.com jaustin@fraserlawfirm.com
Michigan Electric Transmission Company, LLC Richard J. Aaron Courtney F. Kissel Olivia R.C.A. Flower Hannah Buzolits Josh Kluzak Anthony J. Hunt	 raaron@dykema.com ckissel@dykema.com oflower@dykema.com hbuzolits@dykema.com jkluzak@dykema.com ahunt@dykema.com
Foundry Association of Michigan, Energy Michigan, Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy United Timothy J. Lundgren Laura A. Chappelle Justin K. Ooms Lydia Lubbers	 tjlundgren@varnumlaw.com lachappelle@varnumlaw.com jkooms@varnumlaw.com lmlubbers@varnumlaw.com
Urban Core Collective Amanda Urban Mark Templeton Jacob Schuhardt Alex Miskho Emma Young	aelc_mpsc@lawclinic.uchicago.edu aurbanlaw@gmail.com templeton@uchicago.edu jschuhardt@uchicago.edu amiskho@uchicago.edu eyoung28@uchicago.edu

The statements above are true to the best of my knowledge, information, and belief.

Abrams Environmental Law Clinic
Counsel for Urban Core Collective

Date: September 30, 2025

By:

Mark N. Templeton (*pro hac vice*)
University of Chicago Law School
Abrams Environmental Law Clinic
6020 S. University Avenue
Chicago, IL 60637
Phone: (773) 702-9611
templeton@uchicago.edu