

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 150

In the Matter of)	
Petition for Rulemaking Proceeding to)	
Consider Proposed Rule to Establish)	INITIAL COMMENTS OF
Procedures for Disclosure and)	VOTE SOLAR
Prohibition of Public Utility Lobbying,)	
Advertising and Other Expenditures)	

Pursuant to the *Order Dismissing Petition in Part, Granting Petition to Intervene, Joining Necessary Parties, and Requesting Comments* (“Order”) issued August 29, 2019, Vote Solar¹ respectfully submits these comments on proposed modifications to Commission Rules R12-12 and R12-13. In particular, Vote Solar requests that R12-13 should be modified to create a presumption of disallowance regarding organizational dues paid by utilities to organizations engaged in lobbying and public influence campaigns (or other non-recoverable activities). Vote Solar suggests that utilities should carry the burden of proof to show with particularity which portion of such organizational dues directly benefits North Carolina ratepayers.

Vote Solar applauds the Order for clarifying that dues to trade associations and other groups should provide a clear benefit to North Carolina ratepayers to be included in rates. In particular, Vote Solar agrees that “the cost of lobbying activities by such organizations, for legislative advocacy often on a national level that may have little or nothing to do with North Carolina’s public interest, is not a cost that should be borne by North Carolina’s ratepayers.”² While it may be true that some legitimate research and advancements toward best practice on cutting edge issues occurs at organizations like

¹ Vote Solar is a non-profit, grassroots organization that works to make solar generation accessible and cost-effective for all Americans.

² Order at 14.

EPRI, and to a lesser extent EEI, it is important to parse out what portion of overall dues are being used for edifying purposes versus impermissible and unrecoverable purposes. Because the utility seeking recovery bears the burden of justifying recovery—and the Commission has set the bar at “particularity” in relation to public affairs staff—Vote Solar proposes that the Commission extend the standard of particularity to the recovery of industry and organizational membership dues.

Vote Solar acknowledges that accurately parsing the portions of dues that are recoverable could be difficult. But this step is imperative if the Commission is to protect captive ratepayers from being forced to fund corporate speech they may find offensive. There is ample evidence that organizations like EEI are engaged in activities that would fall under the Commission’s prohibition that may not be notated as lobbying on invoices. For example, as detailed in a 2017 report by the utility watchdog Energy & Policy Institute, EEI funds many activities to influence regulators and public debate that are not specifically identified as lobbying expense.³ EEI efforts in this regard provide no intrinsic benefits for North Carolina ratepayers and create headwinds for advocates attempting to advance important policy initiatives on climate and clean energy.

The California Public Utilities Commission (CPUC) recently held that utilities bear the burden of proof to show that organizational dues provide benefit to ratepayers, beyond reliance on the limited information provided by the organization to the utility in the dues invoice. In Southern California Edison’s 2018 test year rate case, the California

³ Kasper, Matt et al., Paying for Utility Politics: How utility ratepayers are forced to fund the Edison Electric Institute and other political organizations (Energy and Policy Institute) (May 2017), available at <https://www.energyandpolicy.org/wp-content/uploads/2017/05/Ratepayers-funding-Edison-Electric-Institute-and-other-organizations.pdf>.

Public Utilities Commission disallowed all EEI dues finding that SCE failed to carry its burden of proof when it submitted nothing further than a standard EEI invoice.⁴ As the Commission there noted, “SCE has failed to present supporting evidence which would enable us to determine how much EEI’s beneficial services should cost ratepayers.”⁵

With the difficulty of parsing recoverable and non-recoverable portions of dues, Vote Solar recommends that the Commission adopt a presumption that dues are not recoverable in any part if the organization in question is (in any way) engaged in activities that could constitute lobbying as defined in Rule R12-12. To overcome this presumption, a utility should be required to produce records of specific expenses undertaken by a dues-receiving organization that provide clear and direct benefits to North Carolina ratepayers. This treatment would be consistent with the traditional burden of proof for cost recovery of expenses. Moreover, this presumption is justified to reflect the mixed nature of such organizations’ spending on matters that would constitute unrecoverable activities and expenses if subjected to scrutiny. A heightened standard for recovery of organizational dues may require organizations like EEI to begin providing greater transparency on their expenditures to member utilities. A lack of scrutiny only invites greater abuse and work arounds to the otherwise prevailing prohibition on recovery of lobbying and similar expenses.

Vote Solar specifically proposes a new subsection (e) to Rule R12-13 to address this clarification:

⁴ California Public Utilities Commission Docket No. A.16-09-001, Decision No. D.19-05-020 at p.250 (May 24, 2019).

⁵ *Id.*

(e) Expenditures made by an electric, natural gas, water or sewer utility for membership dues to an organization shall be presumed to be prohibited under subsection (a) if any part of the dues paid to the organization is used for lobbying, a charitable contribution, political or promotional advertising, or a political contribution. A utility may overcome a presumption that organizational dues are not recoverable from ratepayers by showing through clear and convincing evidence the portion of membership or organizational dues paid that provide direct benefits to the utility's ratepayers and are not otherwise prohibited.

Vote Solar respectfully requests that the Commission establish a presumption of disallowance for organizational dues paid by jurisdictional utilities to organizations that are engaged in lobbying, political influence, or public advocacy. Vote Solar reserves the right to respond to all other issues in reply comments.

Respectfully submitted this 2nd day of December, 2019.

/s/

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