

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

**Rate Recovery, Reporting, and
Accounting Treatment of Industry
Association Dues and Certain Civic,
Political, and Related Expenses**

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Docket No. RM22-5-000

**JOINT COMMENTS OF PJM INTERCONNECTION, L.L.C., CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORP., MIDCONTINENT INDEPENDENT
SYSTEM OPERATOR, INC., AND SOUTHWEST POWER POOL, INC.**

PJM Interconnection, L.L.C. (“PJM”), California Independent System Operator Corp. (“CAISO”), Midcontinent Independent System Operator, Inc. (“MISO”), and Southwest Power Pool (“SPP”) (collectively, the “Joint RTO Commenters”) respectfully submit these limited comments in response to the Federal Energy Regulatory Commission’s (the “Commission”) Notice of Inquiry regarding Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses.¹ As the Joint RTO Commenters are not members of the traditional industry trade associations largely at issue in this docket (such as the Edison Electric Institute), these comments provide a limited response on a discrete subset of the issues raised in this docket.²

Specifically, the Joint RTO Commenters observe that there is great importance today in promoting communication between Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) and public officials on key subjects including

¹ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Notice of Inquiry, 177 FERC ¶ 61,180 (2021) (“NOI”).

² *See, e.g.*, NOI Questions 1 – 14.

accommodating the nation’s move toward a more decarbonized future, promoting grid resilience, protecting consumers, and engaging with the public. These educational and informational exchanges are essential to the RTOs/ISOs’ core operations and benefit customers. The Joint RTO Commenters thus believe that costs associated with these activities are appropriately recoverable from customers. Any Commission action in this proceeding should not disturb the Commission’s precedent in *ISO New England Inc.*,³ as affirmed by the United States Court of Appeals for the District of Columbia Circuit in *Braintree Electric Light Department vs. FERC*,⁴ on the recoverability and accounting for these costs.

In addition, the Commission should continue to allow the recovery of expenditures for organizational and individual employee industry association dues where the benefits of such memberships are educational, developmental, and promote situational awareness. These benefits promote the development of well-trained personnel that can promote core RTO/ISO functions.

I. COMMENTS

A. The Commission Should Not Disturb the *Braintree* Precedent Permitting RTO/ISO Recovery of Certain Government Communication Expenditures

The Commission and the courts have long recognized the unique ability of RTOs/ISOs that do not have shareholders to recover non-operating expenses. There is good reason for this precedent. RTOs/ISOs must be able to fund educational and informational activities essential to their core operations. The only way to fund such essential functions is through rate recovery.⁵

³ 117 FERC ¶ 61,070, at P 46 (2006), reh’g denied, *ISO New England Inc.*, 118 FERC ¶ 61,105, at P 46 (2007).

⁴ *Braintree Elec. Light Dep’t v. FERC*, 550 F.3d 6 (D.C. Cir. 2008).

⁵ “[I]n all cases, RTOs/ISOs are typically allowed recovery of all expenditures; they do not absorb losses and instead pass through all costs that they incur.” *Financial Reporting & Cost Accounting, Oversight and Recovery Practices for Regional Transmission Organizations and Independent System Operators*, 108 FERC ¶ 61,237, at P 15 (2004).

The *Braintree* precedent permits an RTO to recover government affairs costs in its rates.⁶ FERC explained that “because [the RTO] has shown that its informational activities were directly related to existing or proposed core operations and undertaken to benefit its ratepayers, it may recover the costs associated with those activities.”⁷ The United States Court of Appeals for the District of Columbia Circuit recently re-affirmed *Braintree* in distinguishing an RTO’s ability to recover non-operating government affairs costs from a for-profit entity’s ineligibility to recover similar costs.⁸

In the *Public Citizen* proceeding – a complaint docket challenging an RTO’s ability to recover certain non-operating government affairs expenses in its rates – the Commission applied the *Braintree* precedent to reject the challenge.⁹ In doing so, the Commission affirmed the RTO’s ability to recover such costs where the recovered expenditures represent an educational or informational function essential to core operations and support policies the RTO determines to be in the collective best interests of its stakeholders and from which the RTO cannot reap any financial or other benefit.¹⁰

It is also notable that there is already transparency into RTO’s and ISO’s budgets and rates. Such budgets and rates are subject to extensive stakeholder processes and reviews of RTO/ISO costs, and are subject to recovery mechanisms that have been developed with

⁶ *ISO New England Inc.*, 117 FERC ¶ 61,070, at P 46 (2006), reh’g denied, *ISO New England Inc.*, 118 FERC ¶ 61,105, at P 46 (2007), aff’d, *Braintree Elec. Light Dep’t v. FERC*, 550 F.3d 6 (D.C. Cir. 2008) (permitting an RTO to recover government affairs costs in its rates).

⁷ *ISO New England*, 117 FERC ¶ 61,070 at P 48.

⁸ *Newman v. FERC*, 22 F.4th 189, 200 (D.C. Cir. 2021). Notably, this decision focused on formula rate recovery for a for-profit transmission owner’s request for certain costs for certain civic, political, and related activities and did not address cost recovery processes for RTOs and ISOs. In fact, the court noted in referencing the *Braintree* decision that “[t]he only case allowing recovery of similar costs” was “sought by a regional transmission organization” that has extensive stakeholder review processes.

⁹ *Public Citizen, Inc.*, 169 FERC ¶ 61,031, at P 24 (2019), reh’g denied, *Public Citizen, Inc.*, 171 FERC ¶ 61,129, at PP 9-10 (2020).

¹⁰ See *Public Citizen, Inc.*, 171 FERC ¶ 61,129, at PP 4 and 5.

stakeholders and approved by the Commission. In contrast, investor-owned utility costs are most often first seen in a rate proceeding without such advanced disclosures and scrutiny.

Commission precedent recognizes this point, as well. In *Public Citizen*, for example, the Commission declined to impose an itemization/disclosure requirement as to certain non-operating expenses. Based on the RTO's rate case, the Commission concluded that "the structure of the rate, with its oversight from the Finance Committee" offered "adequate independent review because the Finance Committee, composed of stakeholder representatives, including consumer advocates, reviewed the financial information establishing the rate and was satisfied that these figures represent legitimate expenses."¹¹ These holdings remain equally appropriate today. Although such costs could potentially be booked to Account 426.4, their recoverability should be governed by these existing precedents.

Given this established precedent, the Commission should ensure that any issuances in this docket neither implicitly reverse that precedent nor otherwise create uncertainty as to the recoverability of these expenditures.

B. The Commission Should Continue to Permit RTOs/ISOs to Recover Expenditures for Organizational and Individual Employee Industry Association Dues That Are Educational, Facilitate Professional Development, and Promote Situational Awareness

The Joint RTO Commenters observe that at an organizational level, an RTO/ISO may realize benefits in the form of access to knowledge, industry trends, and other emerging issues through industry association membership. The reasonable costs of such memberships benefit ratepayers and should be recoverable through rates. The Joint RTO Commenters take steps to ensure that they do not participate in actions of any of these organizations that could be

¹¹ *Public Citizen, Inc.*, 169 FERC ¶ 61,031, at P 26 (2019) (citing *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,236, at P 25 (2016)).

construed as lobbying for their larger membership. In light of these informational and educational benefits, the Commission should continue to allow RTOs/ISOs to recover association dues. Further, the Commission should encourage such associations to separate out association-based lobbying activities on behalf of their sponsoring members so that RTOs/ISOs do not pay such expenses.¹²

II. CONCLUSION

The Joint RTO Commenters respectfully request that the Commission consider these comments in developing any further issuances in this docket.

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¹² By way of example, PJM, MISO and CAISO are “Associate” members of WIRES to discuss transmission issues, but none of these RTOs/ISOs are a voting members and as a result do not sign on to WIRES advocacy submittals to the Commission as indicated in those filings. In addition, foundational documents of certain RTOs/ISOs provide general guidelines pertaining to lobbying and political influence activities. See MISO Transmission Owners Agreement (“TOA”), FERC Rate Schedule No. 1, at Section 1.A.3 and Section 2.1 of MISO’s Bylaws (Appendix F to the TOA) (“No substantial part of the activities of MISO shall be carrying on propaganda or otherwise attempting to influence legislation.”).