

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

Center for Biological Diversity

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Docket No. RM21-15-000

**PROTEST OF THE  
AMERICAN GAS ASSOCIATION**

Pursuant to the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211, *et seq.*, and the “Notice of Petition for Rulemaking” (“Notice”) issued on March 25, 2021 in the above-referenced proceeding, the American Gas Association (“AGA”) respectfully submits this Protest in opposition to the “Petition For Rulemaking To Amend The Uniform System Of Accounts Treatment Of Industry Association Dues” filed on March 17, 2021 (“Petition”) by the Center for Biological Diversity (“CBD”). As discussed in detail below, AGA urges the Commission to deny the Petition and decline to institute a rulemaking proceeding to amend the Uniform System of Accounts (“USofA”) as requested by CBD.

**I. PROCEDURAL BACKGROUND**

On March 17, 2021, the CBD filed a Petition requesting that the Commission amend the USofA requirements for payments to industry associations engaged in lobbying or other influence-related activities. Specifically, the Petition states that, because industry associations engage in and support certain activities including lobbying and campaign-related donations, the Commission should amend the USofA to require that utilities record the amounts paid in industry association

dues as presumptively non-recoverable for rate recovery purposes.”<sup>1</sup> Specifically, the Petition requests that the Commission amend the USofA to require that all industry association dues be recorded in Account 426.4 instead of Account 930.2.<sup>2</sup> The Petition and the related exhibits refer to various trade associations, including AGA. On March 26, 2021, the Commission issued a Notice setting Monday, April 26, 2021, as the deadline for motions to intervene or protests. The Notice was published in the *Federal Register* on April 2, 2021.<sup>3</sup>

## II. IDENTITY AND INTERESTS

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 76 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 72 million customers — receive their gas from AGA members.<sup>4</sup> AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than thirty percent of the United States' energy needs.<sup>5</sup>

AGA's members are directly affected by the rates, terms and conditions of the transportation and storage services provided by jurisdictional pipelines, including the

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<sup>1</sup> Petition at 1.

<sup>2</sup> See 18 C.F.R. Parts 101 and 201. The Petition sometimes refers to “Account 426,” which is not in the USofA, and at other times to Account 426.4. See, e.g., Petition at 2 and 7. For the purposes of this response AGA assumes that CBD is referring to Account 426.4 in the Petition; however, the inconsistencies in the text of the Petition renders it vague as to the actual relief being sought. See 18 C.F.R. Part 201, Account 426.4.

<sup>3</sup> 86 Fed. Reg. 17342 (April 2, 2021).

<sup>4</sup> Nearly 180 million Americans and 5.5 million business use natural gas. See 2021 AGA Playbook, available at <https://www.aga.org/news/aga-playbook/> (last visited April 23, 2021).

<sup>5</sup> For more information, please visit [www.aga.org](http://www.aga.org).

Commission's accounting policies and the USofA. Furthermore, AGA's members, due to their ownership of various natural gas facilities subject to the jurisdiction of the Commission or because of other corporate structures or activities, maintain their financial records in conformance with the USofA pursuant to the Commission's regulations.<sup>6</sup> Additionally, AGA is also concerned about the precedent that any revision to the USofA would have on state policies. AGA's members are primarily regulated by state utility commissions or other state agencies and several of these regulators have adopted, in whole or in part, the Commission's accounting regulations. It is clear from CBD's Petition that its intent is to not just to revise the Commission's policies, but to revise state policies as well. Therefore, AGA member companies have a direct and substantial interest in the issues raised in this proceeding.<sup>7</sup>

### III. COMMUNICATIONS

All pleadings, correspondence and other communications filed in this proceeding should be addressed to:

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<sup>6</sup> Petition at 8.

<sup>7</sup> AGA filed a motion to intervene (doc-less) in Docket No. RM21-15-000 on April 2, 2021.

#### IV. EXECUTIVE SUMMARY

The Commission should reject the CBD Petition. The request is a solution in search of a problem and fails to demonstrate any need for a rulemaking proceeding. The central premise of the Petition is that lobbying activities should not be recoverable in jurisdictional rates. The reality is that the Commission's current regulations already account for this and require the segregation of lobbying costs in the USofA and the Commission's policy and precedent does not permit the recovery of lobbying related costs in jurisdictional rates. Therefore, the Commission's existing regulations and precedent already address the Petition's primary concern and a rulemaking is redundant and therefore, unnecessary.

The Petition also lacks the factual foundation needed to impose a new regulation or revise the existing USofA. CBD provides no examples of an abuse or violation of the current USofA or any evidence that lobbying activities were improperly accounted for in a proceeding before this Commission. As such substantial evidence is lacking for a rulemaking proceeding and the Commission should reject CBD's unsupported request to amend the USofA. Despite its aggressive rhetoric, CBD provided no tangible evidence that the Commission's existing regulations need to be revised or precedent changed. Simply put, there is no justification to alter the Commission's existing accounting provisions. As explained herein, there is no evidence suggesting that the current regulatory construct enables widespread accounting abuses.

The Petition also employs an inaccurate meaning of the concept of "lobbying." To overcome the practical reality that the Petition's main concern has already been addressed by the Commission, CBD attempts to claim, inappropriately and inaccurately, that essentially *all* trade association activities are lobbying. Such an assertion is simply not correct, and it contradicts this Commission's regulations and other laws, as discussed below, that address lobbying. The simple

fact of the matter is that AGA does conduct advocacy to advance its members' interests – interests that overlap significantly the goals of the Natural Gas Act and other federal statutes, including protecting and advancing the interests of the nation's natural gas utilities and consumers in receiving economically-priced, reliable and safe natural gas supplies. Some of that work is lobbying, as defined by federal law, but many of AGA's activities, advocacy or otherwise, does not involve lobbying. While lobbying is a form of advocacy, not all advocacy is lobbying and, as discussed below, AGA provides a variety of diverse services to members that benefit both members and customers. Many of these services have nothing to do with lobbying and are directly related to improving safety, operational efficiencies, security, a company's environmental footprint, and operator knowledge. CBD's attempt to redefine what is meant by "lobbying" to include public education, regulatory activities, litigation, and filings with administrative agencies should be rejected as inconsistent with federal law and Commission policy.

## **V. PROTEST**

### **A. The Commission's Existing Rules, Regulations, And Precedent Already Address The Relief Sought In The Petition**

The Commission's regulations currently require that trade association related expenses are placed in Account 930.2.<sup>8</sup> Furthermore, expenditures for certain civic, political and related activities are required to be placed in a separate account, USofA Account 426.4.<sup>9</sup> The Commission recently explained its longstanding practice that "while association membership organizations can conduct lobbying on behalf of their members, the portion of the membership fees associated with

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<sup>8</sup> 18 C.F.R. Part 201, Account 930.2 - Miscellaneous general expenses.

<sup>9</sup> 18 C.F.R. Part 201, Account 426.4 - Expenditures for certain civic, political and related activities.

the costs of such lobbying activities should be recorded in Account 426.4.”<sup>10</sup> The Commission has also clarified that “efforts to secure passage of legislation, including analyzing proposals and contacting members of Congress and their staffs to inform them of the impact of legislation on a project should be recorded in Account 426.4.”<sup>11</sup> To effectuate this policy, the Commission has noted that a regulated entity can be permitted to obtain the necessary information from the industry association to make a proper allocation of the dues payment to the appropriate operating and non-operating expense accounts.<sup>12</sup>

Despite the applicability and effectiveness of the Commission’s current regulations, CBD requests that the Commission revise the USofA so that all industry association dues and fees be accounted for in Account 426.4, which is designated for lobbying costs, instead of Account 930.2, which is where trade association related expenses are currently placed. CBD does not provide any examples of abuse or violations of the current USofA or any evidence that AGA’s lobbying activities were improperly accounted for in a proceeding before this Commission. In contrast to the Petition’s speculation, the Commission’s actual experience reflects a history of compliance by the industry with the USofA and of the current regulations effectiveness in resolving issues. The Commission’s experience and the lack of evidence that the current USofA is insufficient demonstrates that there is no justification to amend the regulations. Therefore, the relief sought by the Petition is unwarranted and, as noted below, would not withstand judicial review.

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<sup>10</sup> *Ameren Illinois Company*, 170 FERC ¶ 61, 267, P 130 (2020). *See also ISO New England Inc.*, 117 FERC ¶ 61,070, P 45 (“[T]he portion of industry association fees where that association undertakes lobbying activities should also be recorded in Account 426.4.”); *Eastern Edison Company*, 25 FERC ¶ 61,357, 61,807 (1987) (portion of registered lobbyist’s fees associated with lobbying activities should be accounted for in Account 426.4).

<sup>11</sup> *ISO New England Inc.*, 117 FERC ¶ 61,070 at P 45.

<sup>12</sup> *Id.* at n.63.

AGA submits that the provisions of the USofA and precedent contain appropriate safeguards that address any concerns related to accounting for recoverable and non-recoverable expenses. The current requirements are already part of the jurisdictional ratemaking process and the Commission's record is full of cases where accounting issues are addressed in a rate proceeding before an Administrative Law Judge ("ALJ") or the Commission. One recent example is *Pacific Gas and Electric Company*,<sup>13</sup> in which the Commission addressed concerns raised about trade association membership dues. In the opinion, the Commission affirmed the ALJ's determination, and the position of Commission Trial Staff that allocation of a portion of trade association dues was appropriate. The ALJ, as affirmed by the Commission, noted that pursuant to *Delmarva Power & Light Co.*,<sup>14</sup> regulated entities may allocate trade association contributions to customers to the extent there is a demonstration that the contributions were used for a permissible purpose, and that lobbying is not something that is recoverable.<sup>15</sup> Furthermore, in *Pacific Gas and Electric Company*, the Commission upheld the principle that a regulated entities trade association dues can and do benefit customers and, therefore, are appropriately recoverable.<sup>16</sup> This example illustrates that the current USofA contains a mechanism for determining whether a rate is just and reasonable, and that the current regulations are sufficient to determine what are recoverable and non-

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<sup>13</sup> *Pacific Gas and Electric Company*, Opinion No. 572, 173 FERC ¶ 61,045 (2020).

<sup>14</sup> *Delmarva Power & Light Co.*, 58 FERC ¶ 61,169, at 61,509 (1992).

<sup>15</sup> *Pacific Gas and Electric Company*, 173 FERC ¶ 61,045 at PP 221-228 (2020).

<sup>16</sup> *See Id.* at PP 221, 227, 228.

recoverable expenses.<sup>17</sup> Additionally, the case upholds the principles that trade association dues benefit customers and not all trade association activities are lobbying.<sup>18</sup>

**B. The Petition Does Not Satisfy The Threshold For Imposing New Or Revised Regulations**

Revision or modification of the Commission's rule and policies must be supported by a record of "substantial evidence."<sup>19</sup> Under this standard, the Commission is required to specify the evidence on which it relied and to explain how that evidence supports the conclusion it reached.<sup>20</sup> The Petition fails to allege any specific incident or provide any showing of harm that the Commission's accounting rules, *i.e.*, the USofA, did not address which would justify proposing any revisions to the regulation as related to AGA's membership dues. This type of evidence is precisely what courts have repeatedly required upon judicial review when the Commission has revised its regulations.

While the case concerns the imposition of the Commission's prior Standards of Conduct on regulated entities, the court's determination in *National Fuel Gas Supply Corporation v. FERC*,<sup>21</sup> is nonetheless instructive in this proceeding. In that case, the court vacated the imposition of the Standards of Conduct as to gas pipelines and affiliates. The court determined that the record did not

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<sup>17</sup> Notably, such protections do not exist in other areas of commerce. For example, when someone purchases food at a grocery store imbedded in the prices are several things such as lobbying activities on behalf of the farmers, manufacturers, and store owners. A purchaser does not receive a disclosure of those costs or the ability to object to any lobbying costs being part of the price. The only way to avoid funding lobbying that a purchaser does not agree with is to not buy the product. Under the current provisions of the USofA, natural gas consumers have more protections against funding lobbying than does any shopper at a grocery store, for example.

<sup>18</sup> See Section V.E., *infra*, discussing the benefits AGA provides to members and utility customers.

<sup>19</sup> See, e.g., *Wisconsin Gas Co. v. FERC*, 770 F.2d 1114, 1156 (DC Cir. 1985), citing *Public Systems v. FERC*, 606 F.2d 973, 979 (DC Cir. 1979) (the court applies the "substantial evidence" standard in Section 19 of the Natural Gas Act to notice and comment on rulemakings, and that standard is the same as the arbitrary and capricious standard).

<sup>20</sup> *Id.* quoting *City of Charlottesville v. FERC*, 661 F.2d 945, 950 (DC Cir. 1981).

<sup>21</sup> *National Fuel Gas Supply Corporation v. FERC*, 468 F. 3d 831 (DC Cir. 2006) ("*National Fuel*").



support the Commission's actions and that there was a need for evidence before a new rule could be imposed on regulated entities. As the court observed when the Commission imposed the 2004 revision and expansion of the Standards of Conduct to non-marketing affiliates, the record provided "no evidence of a real problem," and not a single example of abuse was cited.<sup>22</sup>

The CBD Petition fails to provide any relevant examples of an abuse or violation of the current USofA or any evidence that AGA's lobbying activities were improperly accounted for in a rate filing. While CBD asserts essentially that all trade association activities are lobbying, the reality is that this assertion is simply not correct and not consistent with any federal statute, as discussed below. The Petition lacks even a single allegation that a specific regulated entity did not correctly account for AGA's lobbying activities pursuant to the USofA. The largely defamatory and lengthy innuendo assertions<sup>23</sup> that AGA engages in "problematic lobbying activities"<sup>24</sup> in the Petition fails to show any actual evidence even faintly resembling the showing of a violation of the Commission's rules that could support revising any regulation or policy. The speculative assertions of CBD, without any evidence, is grounds alone for summarily denying the Petition.

One of the main supportive items filed with the Petition is a 2017 Whitepaper by the Energy Policy Institute ("EPI") ("EPI Whitepaper").<sup>25</sup> The EPI Whitepaper includes a discussion of the fact that utilities disclose AGA membership information to state regulatory agencies, but this does not support the relief sought by CBD. The fact that utilities are complying with state requirements does not mean that the Commission's USofA was violated or that any state requirement was

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<sup>22</sup> *Id.* at 841.

<sup>23</sup> Petition at 19. CBD attempts to connect a utility trade association to the January 2021 insurrection at the U.S. Capitol. This baseless assertion alone is enough to render CBD's Petition meritless.

<sup>24</sup> Petition at 14, n.56.

<sup>25</sup> Petition at Exhibit A.

violated. In fact, it illustrates that the current disclosure and rate procedures work effectively and as intended. The EPI Whitepaper does not include any example where AGA's lobbying costs were improperly accounted for at the federal level or the state level.<sup>26</sup> Therefore, the Petition's exhibit does not provide the evidence necessary for a rule change.

To support its position, CBD attempts to inappropriately insinuate that all of AGA's activities are lobbying activities. As described in detail below, AGA engages in various types of activities, most of which are not related to lobbying. In Exhibit B to the Petition, CBD attempts to assert that AGA's positions are controversial<sup>27</sup> and that activities that do not meet the definition of lobbying activities should be considered lobbying - not due to any statutory or regulatory requirement, but because CBD may not agree with the merits of AGA's positions. First, simply because CBD does not agree with AGA's positions or because it may consider AGA's activities as "controversial" does not make AGA's actions lobbying under federal law.<sup>28</sup> Disagreements between CBD and AGA on policy positions do not provide any support for revising the USofA or any of the Commission's regulations.

Second, many of the actions that CBD describes in the Petition and attribute to AGA as lobbying activities do not meet the definition of lobbying under federal law. For example, the U.S. Internal Revenue Code ("IRC") denies a deduction for certain lobbying and political expenditures that are, for any amount paid or incurred in connection with, *inter alia*, "influencing legislation," "participation in, or intervention in, any political campaign, on behalf of (or in opposition to) any

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<sup>26</sup> See Petition at Exhibit A at 25-29. In the EPI Whitepaper are examples of a lobbying items, not related to AGA, being addressed in state proceedings. This is an example of the process working to ensure the filings are consistent with state requirements as determined by the state regulator. There is no evidence that AGA's dues were improperly accounted for by a utility or approved by a regulator in violation of a state's requirements.

<sup>27</sup> Petition at Exhibit B ("AGA engages in a host of controversial political advocacy ...").

<sup>28</sup> See, e.g., 26 U.S.C. § 162(e).

candidate for public office,” and attempts to influence the general public “with respect to elections, legislative matters, or referendums.”<sup>29</sup> Furthermore, the Lobbying Disclosure Act (“LDA”) defines lobbying contacts and lobbying activities, in a similar manner, *i.e.*, communications to certain persons about federal legislation, among other things.<sup>30</sup> The LDA also includes various exceptions to the definition of lobbying contacts, such as submitting a “response to a notice in the Federal Register,” “a written comment filed in the course of a public proceeding,” and “a petition for agency action made in writing”<sup>31</sup> – all actions that the Petition wrongly would characterize as “lobbying.”

The Petition asserts that AGA has participated in various forms of judicial or administrative litigation, filed comments with federal agencies in public proceedings, participated through another organization to distribute a coloring book, and supported the development of gas infrastructure, among other things.<sup>32</sup> According to CBD, these types of activities, despite not meeting the federal definition of lobbying,<sup>33</sup> are activities that should be accounted for in the USofA account for lobbying activities. Indeed, CBD has provided no case law or legal precedent that would categorize AGA’s non-lobbying, advocacy, or educational activities as lobbying, and, hence, provided no basis warranting a change in the USofA. Furthermore, CBD admits in the Petition that AGA has reported over \$1 million in lobbying costs in both 2019 and 2020.<sup>34</sup> By stating the foregoing, CBD concedes that AGA has properly accounted for its lobbying costs and since

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<sup>29</sup> See 26 U.S.C. § 162(e).

<sup>30</sup> See 2 U.S.C. § 1602 (7) and (8) (defining what is and what is not lobbying activities and lobbying contacts).

<sup>31</sup> See 2 U.S.C. § 1602 (8) (exceptions to the term “lobbying contact”).

<sup>32</sup> Petition at Exhibit B.

<sup>33</sup> This assumes that the noted coloring book was not used to influence members of congress with regard to legislation.

<sup>34</sup> Petition at Exhibit B.

AGA's budget exceeds \$1 million, CBD admits that most of AGA's budget goes to activities other than lobbying. Therefore, CBD's attempt to characterize *all* AGA activities as lobbying, fails at its core.

AGA notes that under CBD's broad re-definition of lobbying, its own Petition would be considered lobbying. The acceptance of such an expansive definition by a federal agency could have profound ramifications which could impact various organizations and have a chilling effect on entities participating in publicly noticed regulatory proceedings. An action is not lobbying merely because an entity disagrees with the position taken. Under CBD's position, it is not unreasonable that a wide variety of entities that regularly file comments with the Commission would be viewed as conducting lobbying activities, which could have implications for those entities.<sup>35</sup>

### **C. The Commission's Current Accounting Practice Does Not Raise First Amendment Concerns**

CBD states that industry association dues should also be moved from Account 930.2 to Account 426.4 to protect ratepayers' First Amendment rights.<sup>36</sup> First, lobbying costs are already segregated and accounted for in Account 426.4. Second, the Commission has already addressed and rebutted the First Amendment arguments raised by CBD and there is nothing in the Petition to warrant a revised policy.

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<sup>35</sup> According to the IRS, "In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status." Available at <https://www.irs.gov/charities-non-profits/lobbying#:~:text=In%20general%2C%20no%20organization%20may,loss%20of%20tax%2Dexempt%20status> (last visited April 26, 2021).

<sup>36</sup> Petition at 27.

In response to similar First Amendment arguments, *i.e.*, that ratepayer First Amendment rights are implicated in the rates charged by regulated entities and the Commission's costs of service policies, the Commission has explained that the First Amendment applies only to governmental action.<sup>37</sup> According to the Commission, approved rate schedules of regulated entities do not constitute governmental action because the regulated entity, is a private corporation.<sup>38</sup> While a jurisdictional entity can be involved pursuant to the Commission's governing statutes, according to the Commission the "mere fact that a business is subject to state regulation does not by itself convert its action into that of the State. . . ."<sup>39</sup> The Commission's only action is to accept a filing as just and reasonable<sup>40</sup> and the "[m]ere approval of or acquiescence in the initiatives of a private party is not sufficient" to establish governmental action.<sup>41</sup>

CBD has not provided any evidence or legal arguments that the current provisions of the USofA somehow transform a regulated entity's action into a government action that would raise First Amendment concerns.<sup>42</sup> In fact, none of the elements for determining whether action by a regulated entity can be considered governmental action are present in the provisions of the USofA.<sup>43</sup>

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<sup>37</sup> *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,229, P 20 (2016).

<sup>38</sup> *Id.* at P 20 (noting that an RTO is a private, non-profit corporation).

<sup>39</sup> *Id.* quoting, *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974).

<sup>40</sup> See *Williston Basin Interstate Pipeline Co.*, 72 FERC ¶ 61,074, 61,361 (1995) (finding that "[t]he Commission's establishment of a reasonable rate is not in any way equivalent to . . . government compulsion" that the Supreme Court has found to violate the First Amendment and also finding that "the Commission's mere act of reviewing a pipeline's rates and costs does not convert the pipeline's act of making charitable donations into state action triggering First Amendment rights"); *Williston Basin Interstate Pipeline Co.*, 76 FERC ¶ 61,066, 61,381 (1996) (finding that "allowing these de minimis costs as a pipeline business expense does not convert these expenses into the Commission's ordering this conduct, and does not constitute compelled speech on the ratepayers").

<sup>41</sup> *Blum v. Yaretsky*, 457 U.S. 991, 1004–05 (1982).

<sup>42</sup> *Id.* at 1004; *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999) (same).

<sup>43</sup> See *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,229 at P 22 (discussing the elements to include, among other things, a private party exercising powers which are traditionally exclusively reserved to the state, and a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be

Nor does the Petition provide any support for the premise that a regulated entity is acting as a government entity. It is simply not the case that a regulated entity is exercising a power that is normally reserved for the state.<sup>44</sup> The Commission's accounting rules are not themselves sufficient to create a nexus that establishes governmental action.<sup>45</sup> As such, the Commission should determine here, as it has in the past, that the circumstances, *i.e.*, the current state of the USofA, does not create a nexus between the Commission and a regulated entity that would raise First Amendment concerns.

Even if, *arguendo*, a regulated entity's action were to amount to government action, the cases cited by CBD in the Petition do not support a finding that the provisions of the USofA represent unconstitutionally compelled speech. To support its assertions, CBD attempts to apply precedent related to public sector union dues where employees objected to the payment of union dues under state law<sup>46</sup> to the Commission's current practices under the USofA. CBD avers, incorrectly, that the cited material "strongly counsels in favor of the Commission requiring that all industry association dues be recorded in Account 426, where regulators may determine they are entirely non-recoverable."<sup>47</sup> CBD's attempt to apply these public sector union dues cases to the USofA and the Commission's regulatory construct is not appropriate and should be rejected.

CBD cites *Abood v. Detroit Bd. of Educ.*,<sup>48</sup> which provided that agency shop clauses authorizing unions to automatically collect dues from non-member public employees was

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fairly treated as that of the state itself, but noting that the granting of a governmental approval by itself is not sufficient to create a nexus that establishes governmental action).

<sup>44</sup> *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992); *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 353 (1974) ("the supplying of utility service is not traditionally the exclusive prerogative of the State").

<sup>45</sup> *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 175 (1972) (holding that issuance of a state liquor license to a private club that refused to serve a black man on the basis of race did not establish a nexus between the state and the private club "approaching the symbiotic relationship between lessor and lessee that was present in *Burton*").

<sup>46</sup> *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018); see Petition at 22-25.

<sup>47</sup> Petition at 22.

<sup>48</sup> *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

constitutionally valid, and *Janus v. Am. Fed. of State, Cty., & Mun. Emps.*,<sup>49</sup> which overruled *Abood*, to support its invalid First Amendment argument. Despite the status of *Janus* overruling *Abood*, CBD attempts to apply both cases to regulated entities following the current provisions of the USofA. First, prior to *Janus*, the Commission already considered and rejected the application of *Abood* in a cost of service context. The Commission noted that establishment of a reasonable rate is not in any way equivalent to the government compulsion of association found in *Abood*.<sup>50</sup> Furthermore, the Commission has distinguished the facts in *Abood* to those generally presented to the Commission and, therefore, has declined to adopt it, due to the differing circumstances.<sup>51</sup>

The Commission does not appear to have addressed *Janus* to date. Since there is not a First Amendment compelled speech issue, it is not necessary that it do so; however, even if, *arguendo*, there was an issue, *Janus* is not applicable in the context of the Commission's accounting regulations. In *Janus*, the Supreme Court reviewed the provisions of a state law that provided that public employees that did not join the union were nonetheless required to pay an "agency fee," which amounted to a percentage of the union dues. The Supreme Court held that the states and public-sector unions may no longer extract agency fees from non-members based on free speech concerns as well as other concerns with the Court's prior precedent and practical concerns about the information provided to non-members.<sup>52</sup>

As an initial matter, the mandatory public union agency fees, at issue in *Janus*, required by the Illinois Public Labor Relations Act of non-union members are not the same as regulated cost of

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<sup>49</sup> *Janus v. Am. Fed. of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448 (2018).

<sup>50</sup> *Northwest Pipeline Corporation*, 71 FERC ¶ 61,253 (1995), *see also Williston Basin Interstate Pipeline Co.*, 72 FERC ¶ 61,074 (1995).

<sup>51</sup> *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,229 (2016), *supra*.

<sup>52</sup> *Janus*, 138 S. Ct. 2448, 2486.

service revenues approved by the Commission for regulated services. The facts and regulatory context related to Commission accounting and rate setting policies are very different from the facts in *Janus* as there are no “non-members” being compelled to pay rates approved by the Commission. Entities that pay rates approved by the Commission receive the services contracted for and requested by the entities. Those rates and terms of service have been accepted by the Commission as just and reasonable. Therefore, there is an exchange of payment for a regulated service at rates approved by the Commission. Simply put, the regulatory and business context that exists in the energy sector subject to the Commission’s jurisdiction is not analogous to the situation in *Janus* or *Abood*.

**D. AGA Fully Complies With IRS Requirements Related To Lobbying**

The Petition’s assertions center on the fact that organizations such as AGA and its members are somehow not complying with federal law related to lobbying activities.<sup>53</sup> Therefore, it is important for the Commission to know that AGA complies with Internal Revenue Service (“IRS”) requirements and such compliance supports the fact that a rulemaking is not required. Membership organizations like AGA are subject to U.S. IRC Section 162(e), which defines lobbying, as discussed below, and the federal LDA,<sup>54</sup> each of which require organizations to track and disclose the amount spent on such activities. The LDA allows organizations that are subject to 26 U.S.C. § 162(e) to use the IRC definitions in lieu of the definitions of lobbying provided in the LDA. IRC Section 162(e), and the regulations promulgated thereunder, defines “lobbying” broadly to include activities for the purpose of “influencing legislation” at the state or federal level. This includes any attempt to influence legislation through a communication with (i) any member or employee of Congress; (ii)

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<sup>53</sup> See Petition at n.56 and Exhibit B (CBD refers to activities that are not lobbying under federal law as lobbying).

<sup>54</sup> See 2 U.S.C. § 1601, *et seq.*



any member or employee of a state legislature; or (iii) any federal or state government official or employee who may participate in the formulation of legislation.

To comply with the requirements of the IRC and the LDA, AGA uses a method provided in the IRC and which the IRS deems to be reasonable. An accurate calculation typically includes tracking employees' time spent lobbying, allocating overhead costs to the lobbying activity, and factoring actual lobbying expenses, *e.g.*, travel, payments to outside consultants, publications, *etc.*, into the total. Once the data is collected, the total lobbying expense is filed with the appropriate federal agency. This includes the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate, which are required to receive notices under the LDA, each calendar quarter and semi-annually. This calculation is also subject to IRS audit and reviewed annually by external auditors during the audit of AGA's financial statements.

An estimate of the percentage of dues that will be allocated for lobbying expenses, and therefore not deductible by association members, is required by the IRS to be estimated and included on dues notices for the next calendar year. Because the IRS requires this percentage to be estimated in advance, the percentage of dues that will be attributable for lobbying expenses, and therefore not deductible by association members, is estimated in this way and appropriately included on dues notices for the next calendar year. This estimate is based on AGA's forward-looking estimate of lobbying expenses for the coming year, which is in turn based on a review of the past two years' lobbying expenses, including a true-up of expenses for the prior year, as well as the determination of issues that AGA will be working on in the coming year. By examining AGA's actual historical lobbying expenses, its prior estimates as well as any material lobbying activities, AGA uses a reasonable and prudent methodology to determine the IRS required estimate of future lobbying expenses.

## **E. The Vast Majority Of AGA's Functions Do Not Include Lobbying Activities**

CBD's request to update the USofA is premised on the theory that "utilities and the organizations they support" conduct "problematic activities."<sup>55</sup> CBD further maintains that there is no reason to assume that trade association activities in support of members actually benefits ratepayers.<sup>56</sup> According to CBD, this in turn means that there are grounds to treat all trade association activities as if the actions are lobbying and shift the relevant accounting treatment from Account 930.2 to Account 426.4. In contrast to CBD's assertions, trade associations, such as AGA, provide benefits to members and customers that are not related to lobbying activities. AGA provides a vast number of services to members that benefit both the natural gas utility industry and customers. In order to fully evaluate CBD's claims and the relief sought by the Petition, it is important for the Commission to understand, and for the record to include, an accurate summary of AGA's activities. The following sections include a high-level description of AGA, some of its various departments and committees, and the benefits provided to members and customers. AGA's activities, as discussed herein, provide a sufficient basis for AGA industry association membership dues remaining in Account 930.2, while keeping the lobbying activities expenses, consistent with federal law, in Account 426.4.

### **1. Purpose And Organization Of AGA**

As noted above, AGA is a national trade association comprising over 200 distribution companies. As such, it exists to fulfill the needs of the local natural gas distribution companies ("LDCs") and thereby improve the industry's ability to better serve its customers. AGA's vision and mission statements, both are succinct and express AGA's overarching goal of ensuring the

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<sup>55</sup> Petition at 2.

<sup>56</sup> *Id.* at 19.

safe, reliable and cost-effective delivery of natural gas.<sup>57</sup> The Chairman, First and Second Vice-Chairmen and the Immediate Past-Chairman are top officials of member companies, and, together with our President, are the senior officers of AGA.<sup>58</sup> The Board of Directors, who are top executives of member companies, establishes AGA's policies and actively govern the programs, projects, activities, and budget of the association. Reporting to the Board of Directors are various committees. Each committee is composed of employees of member companies of various sizes and from various parts of the country, and each committee has a "charter" that focuses its efforts on a specific functional area of a gas company's operations. Member company employees serve on the 49 committees and their subcommittees and task forces work to complete specific projects that benefit the natural gas industry. In addition, through AGA's functional area contact lists, other employees in each natural gas company also regularly receive materials and information of interest to their functional areas. Examples include federal regulatory updates, industry studies, surveys, and technical papers that illuminate good practices to enhance safety. It is through the work and with the guidance of these committees, that many AGA activities are undertaken.

## **2. Members And Customers Benefit From AGA Membership**

A member company and its customers benefit from participation in AGA in two general ways. The first is by helping natural gas companies improve their local programs, practices, and procedures in all areas of their operation. In this regard, AGA annually provides numerous forums and other vehicles through which a member company's employees can exchange information with their peers in other companies in order to better serve its customers. These face-to-face (now virtual due to the COVID-19 pandemic) exchanges include committee meetings, webcasts,

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<sup>57</sup> See <https://www.aga.org/about/mission/> (last visited April 26, 2021).

<sup>58</sup> See <https://www.aga.org/about/leadership/> (last visited April 26, 2021).

seminars, and other forums. In addition, AGA provides program “clearinghouse” services in a number of areas, enabling member company staff to become more informed in a variety of areas, including customer relations, pipeline safety, cybersecurity protection, and workforce training and development. Through such clearinghouses, AGA maintains information on successful programs conducted by member companies, which is shared with other gas companies, who learn about new tools, technologies or practices that can reduce injuries to workers, reduce methane emissions, enhance customer safety, or improve customer satisfaction.<sup>59</sup>

The second way AGA serves a member company and its customers is by taking action collectively or at the national level that an individual utility could not do practically cost-effectively on its own. For instance, AGA annually produces a number of new publications and technical notes which represent superior industry practices and factual information.<sup>60</sup> These documents often supplement a company’s training curriculum or its technical resource center and serve to educate gas company employees on a variety of topics relevant to the industry. Individual natural gas utilities would not be able to produce such documents independently.

Related to this concept is the power of collaboration that comes from an association where members are continually challenging one another to elevate their performance as public stewards. Indicative of this is AGA’s Best Practices Program, discussed below, which allows companies to benchmark their actions against others and to learn from industry leaders; AGA’s Peer Review Program, discussed below, which allows natural gas companies to review other natural gas company practices to identify areas that are working well or that could be improved; and the

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<sup>59</sup> Details about AGA’s various programs are provided below. See e.g., Sections V.E. 3 and 4, *infra*.

<sup>60</sup> See e.g., Sections V.E. 3, 4 and 5, *infra*.

various commitments for which AGA membership has spurred development of safety, environmental stewardship, and cybersecurity protection.

All of these activities are directed at the same goal – to continue and help improve member companies’ safety, reliability, and environmentally responsible practices, and to support cost-effective delivery of natural gas to their customers, including doing so efficiently and effectively without the cost burden of an unnecessary “learning curve.” If AGA did not exist, solid business practice would call for the creation of such an organization.

### **3. AGA’s Operations And Engineering Services Activities**

Safety is a core value to AGA and its member companies, and AGA is dedicated to the continued improvement of the industry’s longstanding record of providing natural gas service safely and effectively to more than 180 million Americans. The extensive pipeline infrastructure that makes this all possible is vital to the services LDCs provide, and keeping customers safe, secure and informed is paramount. To that end, there are various types of operations and engineering activities conducted by AGA, in multiple functional areas that either directly or indirectly benefit members and customers. The following are some examples of AGA’s operations and engineering activities. These activities include hundreds of initiatives to improve the safety, efficiency and productivity of member companies’ engineering and operating functions.

- **Technical Committees.** AGA’s Operations and Engineering section includes 15 technical committees: Construction Operations, Customer Field Service & Measurement, Distribution Integrity Management Program, Environmental Matters, Engineering, Field Operations, Gas Control, Natural Gas Security, Pipe Materials, Quality Management, Safety & Occupational Health, Supplemental Gas, Transmission Integrity Management Program, Transmission Measurement, and Underground Storage. These technical committees focus on helping natural gas utilities achieve operational excellence in the safe, reliable, and efficient delivery of natural gas. These committees represent the core functions of gas utilities in the gas delivery supply chain and their work is overseen by the AGA Operations Managing Committee. The Operations Managing Committee is comprised of senior operations executives that review and approve on an annual basis the work of each technical committee.

- **Technical Discussion Groups.** Since 2012, AGA has provided companies the opportunity to participate in a series of discussion groups intended to help members address operational challenges. These discussion groups serve as virtual roundtables where members hear presentations and exchange information, ideas, and practices.<sup>61</sup> The roundtables allow members to network with other utilities that share a particular interest and provide companies the opportunity to include multiple individuals in a discussion group without the burden of extensive travel or time commitments. The 2021 discussion groups are: Asset Management, Corrosion Control, Emergency Management and Public Safety, Emission Reductions, Field Worker Assault Prevention, Hydrogen Blending, Pipeline Safety Management Systems, Renewable Natural Gas, Utilization Pressure Systems, Workforce Development and Training, Work Forecasting and Planning.
- **Leading Practices.** AGA has played a key part in identifying the industry-leading practices and innovative work techniques that have assisted member utilities in strengthening their safety programs.
- **AGA's Mutual Assistance. Program and Emergency Planning Resource Center.** AGA's Mutual Assistance Program helps facilitate response, recovery, and restoration of services outside the capacity of a company following a natural or other disaster. This program was on call through hurricanes Harvey, Irene and Maria and the fires in California. AGA's program is intended to supplement local, state, and regional assistance programs where the responding company and company in need of aid are not already covered by an alternate agreement. The Emergency Planning Resource Center is a springboard to the AGA Mutual Assistance Program, Situation Reports and Government resources to support all-hazards response, recovery, and restoration. AGA holds an annual National Mock Drill to test response protocols that are required for a large-scale event that would require assistance from other gas companies.
- **Technical Publications.** AGA develops and publishes a large number of manuals and technical papers that are essential in the day-to-day operations of gas utilities. Examples of publications of high importance for the safe, reliable and cost-efficient operation of a gas utility system include ANSI B109 standards for diaphragm & rotary meters, ANSI Z223.1/NFPA 54 National Fuel Gas Code, ANSI GPTC Z380.1 Guide for Gas Transmission and Distribution Piping Systems, manuals on Gas Quality Management, Odorization, Gas Measurement, Plastic Pipe, Purging Principles and Practices, *Data Governance - Defining Leak Causes for Gas Distribution Systems*, *Blowdown Emission Reduction*, *Emerging Technologies to Secure Remote Locations*, *Leading Practices for Preventing Damages to Meter Sets*, *Guidelines for Natural Gas Companies Conducting an Internal Incident and Event Investigation for Safety and Performance Analysis*, *Supporting and Communicating DIMP within Your Natural*

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<sup>61</sup> All AGA committee and discussion group activities are conducted in strict compliance with federal and state antitrust laws.

*Gas Organization, Quality Metrics for Natural Gas Operations, Quality Metrics for Natural Gas Operations, Guidelines for Understanding Key Hole Technology Associated with Corrosion Control, Risk Modeling Approaches for Gas Distribution Pipelines, Skills and Experience for Effectively Designing Natural Gas Systems, Leading Practices to Reduce the Possibility of an Over-Pressurization Event,* and annual industry occupational injury statistics. AGA also produces or works with other organizations to produce consumer safety pamphlets and fact sheets such as bill stuffers and customer communications. AGA is also involved in relevant industry publications/standards. Examples include:

- NFPA 59A Standard for the Production Storage and Handling of Liquefied Natural Gas
  - ANSI Z21/83 (Gas Appliance Standards)
  - ICC International Fuel Gas Code
  - API 1185 (a pipeline safety public awareness standard under development)
  - API 1164 v3 (Pipeline Cybersecurity Standards)
  - Underground Storage Integrity Standards (API 1170/API 1171)
- **Operations Conference and Biennial Exhibition.** The annual AGA Operations Conference is the natural gas industry's premier gathering of natural gas utility and transmission company operations management for the sharing of technical knowledge, ideas, and practices to promote safe, reliable, and cost-effective delivery of natural gas to the end user. The Operations Conference is AGA's largest forum focusing on such topics as gas measurement, environment, storage, engineering, construction and maintenance gas control, supplemental gas, corrosion control and piping materials. The Operations Conference is AGA's largest event featuring over 100 presentations and roundtables. The conference includes safety achievement awards and presentations by safety award recipients. Every other year, an exhibition is held in conjunction with the Operations Conference that attracts vendors exhibiting tools and technologies to improve safety, operations, and efficiencies. The 2019 exhibition featured over 250 exhibitors.
  - **Plastic Pipe Manual for Gas Services.** AGA's Pipeline Materials Committee evaluates the use of plastic materials and new fabrication techniques for gas piping systems. This Committee publishes the AGA Plastic Pipe Manual for Gas Services, which includes the latest information on plastic materials, piping components, and design as well as installation procedures covered under today's codes and standards for natural gas distribution piping systems. Through the use of this information, member companies can more quickly, confidently, and safely move to increase the use of plastic materials. AGA also assists the Plastic Pipe Institute in maintaining a plastic materials integrity library. This library provides information on historic plastic pipe, fittings and couplings and any known plastic material issues.
  - **Best Practices Program.** The AGA Best Practices Program is an effort to identify effective practices and innovative work procedures that can be used to improve participants' operations and reduce costs. It focuses on improving the safety and

efficiency of gas distribution system construction, maintenance, operation, and management. The Best Practices Program features data collection to identify companies that have optimal performance in particular areas. It culminates at roundtables at which companies identified as employing leading practices share their techniques with other program participants. AGA annually features five gas distribution operations topics, such as Emergency Response, New Piping Construction, Damage Prevention, Employee Safety, or Corrosion Prevention. Program participants avoid consultant fees for gathering and analyzing industry data. AGA members have documented millions of dollars in savings from participation in the Best Practices Program. These savings can translate into lower costs for customers.

- **SOS Program.** The SOS Program is a resource for AGA members who have the need to inquire of other companies on a particular operational or engineering subject. The SOS program is a simple and effective way for members to better understand how others are addressing a particular operational challenge. For example, SOS requests include member-initiated surveys on the following topics:
  - Emergency Preparedness Planning
  - Fire Retardant Clothing Requirements
  - Facility Security
  - Training of Public Safety Officials
  - Leak Investigation Practices
  - Testing Plastic Pipe
  - Safety Requirements for Entering Residences
  - Intermittent Voltage Checks
  - Portable Fire Extinguishers
  - Security for Company Collectors
  - Injury Prevention
  - First Responder Natural Gas Safety Training Outreach During COVID-19
  - PPE Requirements
  - Serious Injury or Fatality Investigations/Evaluations
  
- **Stakeholder Organizations.** Furthermore, AGA works with a wide range of government, industry and stakeholder organizations to improve safety and security, including the Departments of Transportation's Pipeline and Hazardous Material Safety Administration, Department of Energy, Department of Homeland Security, National Transportation Safety Board, the National Association of Pipeline Safety Representatives, National Association of Regulatory Utility Commissioners, Common Ground Alliance, and national and regional trade associations.

These are just a few of the many operations and engineering-related projects that benefit a member company and its customers. While in most areas the benefits to consumers in terms of



efficiency and lower costs cannot easily be quantified in specific dollar amounts, taken together they represent very significant cost benefits to the consumers.

#### 4. AGA's Oversight Committees And Safety Programs

AGA has played a key part in identifying the industry-leading practices and innovative work techniques that have assisted member utilities in strengthening their safety programs. To help enhance the safety of the natural gas delivery system, AGA has four (4) safety oversight committees and several safety programs:

- **Safety Committee.** This committee focuses on supporting member companies in their enhancement of their overall safety and security program, including pipeline safety; physical and cybersecurity; employee, utility contractor, and customer safety in the home; and public safety.
- **Pipeline Safety Management Systems (“PSMS”) Executive Steering Committee.** Formed in October 2020, the PSMS Executive Steering Committee promotes the sharing of incidents and near misses, assists the industry in advancing PSMS, and provides oversight and guidance on implementation of AGA PSMS initiatives.
- **Operations Section Executive Committee and Managing Committee.** This committee formulates the policies of the operations section and provide oversight of the work of the operations committees, programs, and initiatives.
- **Operations Safety Regulatory Action Committee.** This committee is vested with authority to represent AGA membership advocacy positions on areas that impact pipeline safety.
- **Safety Programs.** AGA provides its members with innovative safety programs:
  - **Peer Review Program.**<sup>62</sup> This voluntary peer-to-peer safety and operational practices review program allows natural gas utilities throughout North America to observe their peers, share leading practices and identify opportunities to better serve customers and communities. This industry effort helps enhance the safe and reliable delivery of natural gas to homes and businesses across the country. Companies take turns reviewing one another's operating procedures and business protocols that drive pipeline safety, customer safety, workforce training, and safety culture. During a company's review, an AGA staff person

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<sup>62</sup> See AGA, Peer Review Program, <https://www.aga.org/events-community/peer-review/> (last visited April 26, 2021).

and the Subject Matter Expert (“SME”) team interview the participating or “host” company employees, which can include senior executives, middle management, crew leaders, field workers, HR personnel, union representatives, contractors and more. In addition, an executive from a peer company will attend with the purpose of guiding the SME team while making observations. A typical review lasts four days, includes 12 – 17 subject matter experts and 60 – 100 interviews, with the final day featuring a written report and verbal presentation that highlights the review team’s observations to company leadership. All observations made during the review are confidential and are not shared outside of the review.

- **PSMS Virtual Assessment Pilot Program.** PSMS is a voluntary initiative that industry and government officials believe can enhance pipeline safety, operations, and efficiencies. In late 2020, AGA launched a PSMS Virtual Assessment pilot program to determine if virtual PSMS assessments of a company, by their peers, can be done effectively and is meaningful to both the company receiving the assessment and the companies participating in the assessment. Thirteen operators are participating in the pilot program. The participating companies are dedicating resources to strengthen their own PSMS and to assist AGA in advancing the PSMS of other participating companies.
- **Executive Leadership Safety Summit.** To help enhance the safety of the natural gas delivery system, AGA annually conducts an Executive Safety Leadership Summit for its members to come together and exchange practices and share lessons learned in four (4) critical areas of safety:
  - Public Safety
  - Gas Company Worker Safety
  - Customer Safety
  - Pipeline Safety

This annual event for natural gas utility executives and safety officers focuses on the state of the natural gas industry in all aspects of safety, including case studies, roundtable discussions, and presentations provided by government and industry safety leaders. Over 100 senior leaders from AGA members attend this event, and its value lies in the information shared by companies that have either experienced some type of safety incident or have implemented some unique safety initiative that might also benefit other AGA members. The 2021 Safety Summit will be held virtually in November 2021.

- **Safety Resource Information Center.** A website clearinghouse for safety information including external safety alerts (Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, U.S. Chemical Safety Board, Occupational Safety and Health Administration), member generated safety alerts, a Lessons Learned Database, cybersecurity materials, case studies, member safety messages, vehicular safety materials, government safety statistics, AGA Safety Statistics and safety articles from the American Gas Magazine.

- **Gas Field Worker Assault Prevention Program.** This cross-committee effort facilitates information exchange to help deter gas worker assaults. Three (3) areas of focus include:
  - Resources/Technologies (alert devices, heat maps, etc.) that can enhance the safety and security of field personnel;
  - Program Development: Tools, business practices, and references to build or enhance a utility's gas worker safety/security program; and
  - Coordination: Identify internal and external coordination opportunities.
- **Operational Risk Data Committee (“ORDC”).** The ORDC was established in October 2020 to conduct a deep dive analysis of Pipeline and Hazardous Materials Safety Administration's natural gas distribution and transmission pipeline incident data to determine potential trends and issue reports of its findings. Information from the ORDC reports may assist operators with their integrity management efforts.
- **Voluntary Event and Near Miss Data Collection and Analysis.** In February 2021, the AGA Board approved AGA's collection and analysis of pipeline related events and near misses voluntarily submitted by AGA members. Once a secured data site has been established, operators will have the ability to complete an on-line form to submit information. The voluntarily submitted and anonymized data will be analyzed by the Operational Risk Data Committee for potential trends.
- **The Downstream Natural Gas Information Sharing and Analysis Center (“DNG-ISAC”).** This is a platform that was created by AGA for sharing cyber and physical threat intelligence, incident information, analytics, and tools. The DNG-ISAC helps natural gas utilities throughout the nation share and access timely, accurate and relevant threat information as part of their continued commitment to the safe and reliable delivery of clean natural gas to customers throughout the nation. All AGA member companies have full access to the DNG-ISAC.
- **Plastic Pipe Data Collection Initiative.** Since 1999, AGA has collected data on in-service plastic piping system failures and leaks with the objective of identifying possible performance issues. Company participation in the initiative is voluntary and the database is designed to address confidentiality concerns. Several times each year, the database is analyzed by the Plastic Pipe Database Committee, composed of representatives of AGA, American Public Gas Association, Plastics Pipe Institute, National Association of Regulatory Utility Commissioners, National Association of Pipeline Safety Representatives, National Transportation Safety Board, and Pipeline and Hazardous Materials Safety Administration. Information from this analysis is published on the AGA website and various government websites.

## 5. Energy Markets, Analysis And Standards Activities

AGA's energy and analysis group identifies the need for and conducts energy analyses and modeling efforts in the areas of gas supply and demand, economics, and the environment. The group also supports the development of building energy codes and standards (see above) that help enhance natural gas safety. Furthermore, AGA markets, analysis and standards activities include providing important and timely information service to a member company. For example:

- **Market Data.** A vast array of data about all aspects of the natural gas industry is collected and compiled in ready-reference form. Among these publications are GAS FACTS, and the LDC Winter Heating Season Performance Survey.
- **Analyses.** AGA also undertakes a wide range of analyses on environmental, financial, gas supply, gas demand, consumer cost, capital requirements, resource efficiency and other issues facing the gas industry. These analyses are of great value in assisting a member company and other decision-makers in addressing current energy challenges and in establishing policies in the best interest of the nation.

## 6. AGA's Financial And Administration Activities

AGA conducts financial and administrative activities that benefit members and member company customers. The following are some examples of AGA's financial and administrative activities.

- **Financial Workshops.** AGA sponsors topical workshops on cutting-edge issues facing our member companies. One example is AGA's Financial Forum along with its Finance Committee meeting which brings together Chief Financial Officers, Investor Relations Executives, and key stakeholders in the financial community. Another example is the Accounting for Derivatives Workshop, which is targeted towards member company accounting professionals that work with derivatives.
- **Accounting Standards.** The Accounting Principles Committee works extensively with the Financial Accounting Standards Board and the Securities and Exchange Commission to ensure that new accounting standards or information requests are sound and not unnecessarily burdensome to implement. Over the past two years, numerous responses have been filed with these organizations on their proposals, and have been instrumental in positions adopted.
- **Insurance.** Through AGA's Risk Management Committee, member companies are provided with information that is beneficial in evaluating insurance coverages. AGA

also provides members with the opportunity to meet with committees representing insurance companies to resolve mutual challenges. In addition, AGA was instrumental in forming a utility mutual insurance company that provides competition to the commercial insurance markets, resulting in broader coverage and more competitive premiums. Most member companies' insurance coverage is with this mutual insurance company. Premium savings to companies ranges up to 20 percent over insurance from other sources

- **Data Source.** In the customer activities area, AGA's Data Source is the utility industry's premier tool for analyzing and improving customer service programs. It is an extensive database of performance metrics on customer service functions such as call centers, energy assistance programs, billing, and meter reading. The database compares information submitted electronically by the program participants. A powerful online search engine and analytical tools enable members to retrieve data efficiently, thereby increasing employee productivity. This program saves each participant approximately \$35,000 annually compared with hiring a commercial benchmarking firm.
- **Surveys.** AGA conducts an annual survey covering corporate and employee salary and benefit information, which is helpful in identifying trends and implementing changes. This supports cost containment.

These are just a few examples. Although the cost to a member company for this information is small, if a member company were to develop this information on its own, the cost could be in the tens of thousands of dollars.

## **7. AGA's Office of General Counsel**

The Office of General Counsel provides legal counsel to AGA. A significant responsibility of AGA's legal staff is to assist member company attorneys in more effectively performing their duties, thereby reducing their companies' cost of service. For example, AGA offers litigation alerts, forums, and workshops on a broad range of issues of interest to its member companies. Furthermore, the Antitrust Compliance Programs provide assistance to members in potentially precedent-setting litigation, as well as analyses and legal summaries. The AGA Legal Committee sponsors the Legal Forum, the preeminent legal program for attorneys at gas utilities. Continuing legal education credit is available for attorneys that participate in AGA's legal programs at a cost

lower than other sources. For the last several years, the Office of General Counsel developed the AGA FERC Manual, an authoritative source of information about how the Commission's rules affect natural gas utilities. The manual provides valuable insights into navigating the Commission's various offices, and developing compliance plans. The manual includes material regarding the history of the Commission's regulation of natural gas utilities, the services of pipeline and storage companies, how to obtain capacity directly from the pipeline, rules regarding capacity release, the Commission's regulation of LDCs as sellers of natural gas, LDCs as transportation and storage service providers, the Commission's rules regarding the prohibition of energy market manipulation and the Commission's reporting requirements. It includes tables, charts, checklists, summaries, and hypothetical scenarios to facilitate members' understanding and compliance with Commission regulations.

Members of the Office of General Counsel also serve as staff executives for the AGA FERC Regulatory Committee, which consists of gas utility in-house attorneys, regulatory compliance officers, gas supply and transportation managers, and regulatory affairs representatives. The Office of General Counsel also sends regular regulatory updates to members summarizing Commission issuances relevant to the gas industry.

#### **8. AGA's Governmental Affairs And Public Policy Program**

AGA's Governmental Affairs and Public Policy department and its activities benefits members and member companies' customers as well. AGA has in place a program to monitor federal legislative activities and to discuss with members of Congress and their staff the regulated

gas industry's views on these activities.<sup>63</sup> While the subject matter AGA monitors are broad, all of AGA's legislative positions have either a direct or indirect benefit to gas utility customers.

For example, AGA is a leader advocating for increased funding of the Low Income Home Energy Assistance Program ("LIHEAP") by the federal government - a program that is essential in reducing the financial burden of those on low and fixed incomes due to the fundamentally necessary heating and hot water service. Furthermore, with the increasing help of many other state, local and regional low-income consumer-oriented organizations, AGA continues to work to ensure the maintenance of adequate funding for the program. AGA's efforts contributed to final FY2021 appropriations of \$3.75 billion. In addition, AGA successfully led efforts to appropriate an additional \$4.5 billion in supplemental LIHEAP funding in the American Rescue Plan Act of 2021 to help offset the economic crisis low income consumers are experiencing during the COVID-19 pandemic. All told, the \$8.25 billion allocated to LIHEAP in FY2021 is the highest funding level in the history of the program for some of the most financially burdened individuals.

One of the most important issues AGA engages in is, and will always be so engaged, is pipeline safety. AGA members invest \$91 million every day to enhance the safety of natural gas distribution and transmission pipeline systems. Furthermore, safety is a joint effort, a partnership that engages customers, industry, and policymakers at the federal and state level to help ensure the safety, reliability, and resiliency of America's 2.6 million mile underground pipeline system. Recently, AGA worked diligently with federal legislators, industry partners, and other non-governmental organizations to help develop federal pipeline safety reauthorization legislation. Passed in December 2020, the Protecting our Infrastructure of Pipelines and Enhancing Safety

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<sup>63</sup> The activities of this AGA department includes lobbying contacts and activities, as defined by federal law, whereas the vast majority of the activities in the other departments would not include lobbying. As such, activities that constitute lobbying are subject to the accounting, reporting, and identification requirements noted above.

(“PIPES Act”) of 2020, reflects 2.5 years of work and negotiation to help develop reasonable, practicable - and bipartisan - pipeline safety legislation that improves many facets of pipeline operations and related management, training and public accountability procedures.

Another important issue on which AGA has lobbied is the budget authorizations and allocations for the Department of Energy’s research and development programs. The Department’s research and development budget has been drastically reduced in recent years. AGA believes that gas-related programs have suffered unjustifiably large cutbacks compared with projects for other forms of energy - especially in light of the present and future critical importance of natural gas, renewable gas, and hydrogen to meet the nation’s energy needs, and the substantial benefits these programs can provide U.S. gas consumers.

These are a few examples. The cornerstone of those examples is that AGA’s government relations efforts play a key role in protecting the interests of not only member companies but also their customers from proposed legislation that inadvertently or otherwise could have serious impacts on gas supply and cost of gas service.

#### **9. AGA’s Regulatory Programs Are Not Primarily Devoted To Lobbying**

As the foregoing discussion demonstrates, AGA’s involvement in federal government lobbying is a small part of AGA’s overall regulatory efforts and an even smaller part of AGA’s overall activities. For example, AGA frequently comments on regulations proposed by a great number of executive branch agencies such as the Environmental Protection Agency, Department of Energy and Department of Transportation, and independent agencies such as this Commission, Securities and Exchange Commission, and Commodity Futures Trading Commission to communicate the interests of the gas utility industry and its customers, much as companies do individually before the agency in rulemaking proceedings. Notably, AGA is active in proceedings



before this Commission as members rely on natural gas pipelines to receive supply in order to serve customer needs.

Reviewing and commenting on the economic and other impacts of the many regulations affecting the gas industry is an important aspect of AGA's regulatory work. Such efforts reduce the operating costs of member companies and help ensure resources are directed towards effective and enhanced processes and thus, are of direct benefit to consumers who must ultimately pay the costs of compliance with government regulations and policies.

The regulatory activities, such as those undertaken by AGA are necessary for, and beneficial to, natural gas distribution companies. Specifically, with government at the federal level continuing to be involved in matters such as safety, clean air and water, funding of energy research, and conservation of energy, there continues to be a need for the regulated gas companies to be aware of proposed actions and their potential economic and other impacts in a timely manner and so that collective industry views and information are made known to the federal decisionmakers. The only way the governmental and regulatory process can arrive at balanced results is for all interested groups to express their views and share information. AGA is the most efficient medium through which collective views and information of member companies on gas industry matters can be communicated, complementing individual companies' own communications. It is important to note, however, that communication between AGA and federal agencies is not just one way. Federal agencies look to AGA when there is a need to provide special notices to gas utilities and other parties quickly. On many occasions, AGA provided this service to the Commission, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration, Commodity Futures Trading Commission, the Consumer Products Safety Commission, the Environmental Protection Agency, and the National Transportation Safety Board.

AGA's regulatory activities and advocacy efforts also benefit executive branch agencies by making proceedings more efficient. For example, AGA's submissions allow the industry to speak with one concise voice. Instead of reviewing several similar comments filed in proceedings or listening to different speakers make the same point, AGA's advocacy efforts allows its members to make important industry positions and opinions on matters more succinctly, reducing the workload of both the agencies and other participants to proceedings.

#### **10. COVID-19 Related Activities**

Throughout the COVID-19 pandemic, America's natural gas distribution network continues to be safe and reliable. Systems have remained fully operational, and natural gas has continued flowing to our country's over 72 million customers. During the pandemic, half of all Americans have depended on natural gas as energy to fuel their homes and businesses.<sup>64</sup> This includes the hospitals, grocery stores and other vital services critical to the nation's well-being during the pandemic. It also includes making sure people have heat, hot water, and cooking when they are sheltered in place, as has been the case to varying degrees across the country for the past several months. AGA continues to play a vital role in supporting our member company utilities, in their delivery of natural gas.

For our member companies, the value of AGA membership cannot be fully measured. During the pandemic, AGA's leadership role for the natural gas industry has been magnified and member utilities have relied even more on AGA to provide information and leading practices to help them manage the safety of their employees and customers. The following examples demonstrate the leadership role that AGA has played since the start of the pandemic:

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<sup>64</sup> See 2021 AGA Playbook, available at <https://www.aga.org/news/aga-playbook/> (last visited April 23, 2021) (nearly 180 million Americans and 5.5 million business use natural gas).

- **Essential Workers.** AGA has worked to ensure utility personnel have been designated as essential critical infrastructure workers at the federal level. This designation has afforded AGA members the ability to continue responding to the needs of customers, which includes emergency response activities such as leak investigations, which may require their workers to enter a customer's home. Throughout the pandemic, utility personnel have been provided the appropriate personal protective equipment such as masks, gloves, protective suits and coverings, soap, and hand sanitizer to mitigate the threat of contamination. This would not have happened without AGA's efforts.
- **Spread Prevention.** AGA member companies have adopted policies and changed operating procedures to prevent the spread of COVID-19 and to provide reassurance to employees and customers that their health and safety are always the most important consideration. They have learned of leading practices from fellow utilities during AGA virtual meetings, which have covered a wide spectrum of topics the past 13 months.
- **Meetings.** Approximately 127 virtual meetings have been held since March 15, 2020 where COVID-specific operating practices in gas operations have been spotlighted, and presentations have educated member companies on issues associated with employee management, legal matters, and return to workplace strategies.

In addition, gas distribution utilities have been dedicated to helping their communities since the onset of the pandemic. LDCs recognized early on that many of their customers would face financial difficulty, so the utilities took immediate actions to help by collecting donations and conducting food drives. In addition, utilities across the country suspended late fees and service disconnections for non-payment, reconnected those who had been disconnected, and offered bill payment assistance for those struggling financially. Furthermore, most large utilities have made significant contributions to local fundraising efforts in order to provide support for individuals in need.

In summary, the benefits of almost all of AGA's activities either directly or indirectly are realized by the customers of AGA members. Highlighted above are a few AGA activities that illustrate how member company customers (72 million) benefit from such undertakings.<sup>65</sup>

## VI. CONCLUSION

For the reasons stated above, the American Gas Association respectfully requests that the Commission deny the Petition.

Respectfully submitted,

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<sup>65</sup> AGA's website [www.aga.org](http://www.aga.org) contains additional information about AGA and its programs to benefit members and their customers.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021).

Dated this 26th day of April 2021, Washington, DC.

*/s/Matthew J. Agen*

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