U.S. Federal Trade Commission
Chair Lina Khan
Commissioner Alvaro Bedoya
Commissioner Noah Phillips
Commissioner Rebecca Slaughter
Commissioner Christine Wilson

June 14, 2022

Re: Petition for FTC Investigation into the Electric Utility Industry's Abusive Practices that Stifle Renewable Energy Competition and Harm Consumer Protection

Dear Chair Khan and Commissioners Bedoya, Phillips, Slaughter, and Wilson:

We, the undersigned entities, consisting of 239 consumer, anti-monopoly advocates, public interest and environmental organizations, and rooftop solar companies, respectfully request that the U.S. Federal Trade Commission ("Commission") commence an investigation of the electric utility industry's practices that impede renewable energy competition and harm consumer protection pursuant to the Commission's authority under Article 6(b) of the FTC Act. Sec. 6(b), 15 U.S.C. § 46(b). (See Petition for an Article 6(b) Investigation, attached.)

As the rise of renewable energy competition and changing regulatory landscapes challenge electric utilities' century-old technology and business model, the electric utility industry is engaging in unfair competitive, unfair business, and consumer-harming practices that warrant the Commission's investigation. The Petition includes detailed examples of two classes of electric utility abuses: (1) unfair competitive actions that harm clean energy competitors, including consumers generating their own renewable electricity; and (2) unfair and deceptive acts, including corrupt dealings and voting interference, that enrich utilities and ultimately drive up consumer electricity rates and decrease consumer choice.

The investigation we request would follow in the groundbreaking footsteps of the Commission's Article 6(b) investigation of the electric utility industry from 1928-1935, which led to the enactment of the Public Utility Holding Company Act of 1935.

Today, abusive utility practices are leading to increased electricity rates, obstruction of clean energy competitors in the face of climate change, and utility interference in democratic processes. The urgency for a federal investigation of utility companies' unfair competitive and anti-democratic practices at this time cannot be overstated.

Thank you for your consideration, and please do not hesitate to reach out with questions to Jean Su with the Center for Biological Diversity, jsu@biologicaldiversity.org, on behalf of petitioning organizations.

[*See pages following Petition for signatory petitioners.*]

PETITION TO THE FEDERAL TRADE COMMISSION

TO COMMENCE ARTICLE 6(B) INVESTIGATION RE: THE ELECTRIC UTILITY INDUSTRY'S ABUSIVE PRACTICES THAT STIFLE RENEWABLE ENERGY COMPETITION AND HARM CONSUMER PROTECTION

June 14, 2022

Introduction

The undersigned 237 consumer, anti-monopoly advocates, public interest and environmental organizations, and rooftop solar companies, respectfully submit this petition to the U.S. Federal Trade Commission ("FTC" or "Commission") to commence an investigation of the electric utility industry's harmful practices to consumers and competitors that are negatively impacting renewable energy competition and consumer electricity pricing.

As the rise of renewable energy competition and changing regulatory landscapes challenge electric utilities' century-old technology and business model, electric utilities are engaging in unfair business, consumer-harming, and unfair competitive practices that warrant the Commission's investigation. Specifically, the electric utility industry is committing at least two classes of harmful activity: (1) unfair competitive actions that harm clean energy competitors, including consumers generating their own renewable electricity; and (2) unfair and deceptive acts, including corrupt dealings and voting interference, that enrich utilities and ultimately drive up consumer electricity rates and decrease consumer energy choice. (*See* Addendum 1.) We respectfully request the FTC investigate the electric utility industry's consumer-harming and unfair competitive practices pursuant to the Commission's Article 6(b) powers under the FTC Act, which empowers the agency to conduct a broad investigative study and request information from corporations in question. Sec. 6(b), 15 U.S.C. § 46(b).

The investigation we request would rely on an approach the agency has taken before. From 1928-1935, the FTC conducted a complex investigation into electric utility abuses[1]; the findings of that study led to the enactment of the Public Utility Holding Company Act of 1935, which sought to address the "great concentrations of economic and even political power vested in power trusts, and the absence of antitrust enforcement to restrain the growth and practices of public utility holding companies."[2]

Nearly a century later, electric utilities are once again abusing their monopoly status and the regulatory system to maintain their *status quo* market control. An investigation is particularly warranted now because of the ramifications of these utility practices on consumers' ability to afford electricity,

1 Fed. Trade Comm'n, *Summary Report of the Federal Trade Commission to the Senate of the United States Pursuant to Senate Resolution No. 88, 70th Cong., 1st Sess., Economic, Financial, and Corporate Abuses of Holding and Operating Companies of Electric and Gas Utilities* (1935) [hereinafter 1935 FTC Summary Report].

2 *Gulf States Utils. Co. v. Fed. Power Comm'n*, 411 U.S. 747, 758 (1973).

competitors' ability to provide and use renewable energy, and electric utility interference in democratic processes.

The FTC is uniquely placed to undertake this industry investigation for several reasons. First, these utility abuses are facilitated by our nation's complex and fractured utility regulatory system, in which large, multi-state holding corporations are principally regulated by state utility commissions. While state and federal regulators have some jurisdiction over these activities, only the FTC is empowered to take a holistic view that is not constrained by the jurisdictional lines Congress established between state commissions and the Federal Energy Regulatory Commission ("FERC"). Second, as detailed in Addendum 2, both the sheer size and dominance of multi-state utility companies, and their remarkably close ties with local regulators who are supposed to serve as their principal antitrust enforcers, demonstrate that only the FTC is in a position to police the many forms of abusive behavior discussed. Third, in light of the Biden administration's goals of achieving rapid, equitable decarbonization and household energy security, the FTC holds a vital role in investigating utility actions that are obstructing the renewable energy transition necessary to address climate change and wean off fossil fuel dependence.[3]

[3] Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021), https://www.whitehouse.gov/briefing-room/presidentialactions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad; White House, Remarks by President Biden Announcing U.S. Ban on Imports of Russian Oil, Liquefied Natural Gas and Coal (Mar. 8, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/08/remarks-by-president-biden-announcing-u-s-ban-on-imports-of-russian-oil-liquefied-natural-gas-and-coal/.

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I. Brief Background on Current Electric Utility Industry

The electric utility industry is a unique sector in the American economy. Electric utilities hold market monopolies not due to merit but instead century-old state laws that granted investor-owned utilities[4] ("IOUs") local service territories and dependable revenues in exchange for being regulated by state-level utility commissions.[5] State legislatures in the early 20th century saw advantage in monopoly utility markets at a time when the technology was nascent to capture economies of scale in the limited available forms of electricity generation.

However, for the last several decades, as the FTC has recognized, the electric utility industry has experienced significant changes in both emerging new technologies—particularly renewable energy sources like solar and wind—and regulatory changes in restructuring and disaggregating services of electric generation, transmission and distribution that were historically vertically integrated.[6] At the same time, growth in utility electricity sales has also flattened and started to decline, in light of near-universal access to power, energy efficiency and conservation technologies, and competitors like rooftop solar which diminish utility sales. These changes threaten the traditional utility business model that is predicated on ever-increasing electricity sales and incentives to invest capital to meet that growing demand.[7]

Ultimately, these changes have fundamentally challenged electric utilities' century-old technology and business model, and the industry's response is leading to harm of competitors and consumers. Many utilities are unfairly using their monopoly status as franchised operators to manipulate transmission projects, limit distributed energy development, and inappropriately tilt the overall regulatory process to their favor. In electricity transmission, for example, monopoly utilities have gamed governance processes at Regional Transmission Operators ("RTOs") and Independent System Operators ("ISOs"), stunting those organizations' abilities to encourage competitive markets and allowing utilities to favor generation facilities owned by their parent holding companies.[8] More examples are detailed below. At base, state laws granting utility monopolies over a century ago were not intended to shield utilities from competition from more cost-effective producers and sources. Yet that outcome is a reality today.

As a result, these unpoliced utility abuses result in harms not merely limited to competitors and consumers, but to the greater public interest, climate change, and democracy. The public's faith in the

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4 For purposes of this investigation, we seek the Commission's concentration on private or investor-owned utilities ("IOUs"), which serve 72% of U.S. electricity customers. U.S. Energy Info. Admin., *Investor-owned utilities served 72% of U.S. electricity customers in 2017*, Today in Energy (Aug. 15, 2019), https://www.eia.gov/todayinenergy/detail.php?id=40913.

5 Scott Hempling, *Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* (2020).

6 Fed. Trade Comm'n, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition* (2001), https://www.ftc.gov/sites/default/files/documents/reports/competition-and-consumer-protection-perspectives-electric-power-regulatory-reform-focus-retail/electricityreport.pdf.

7 Ari Peskoe, *Unjust, Unreasonable, and Unduly Discriminatory: Electric Utility Rates and the Campaign Against Rooftop Solar*, Texas Journal of Oil, Gas, and Energy Law (2016).

8 Ari Peskoe, *Is the Utility Transmission Syndicate Forever?*, Energy Bar Association (2021), https://www.eba-net.org/assets/1/6/5_-_%5BPeskoe%5D%5B1-66%5D.pdf.

traditional utility system is crumbling under the weight of utilities' political machines—and understandably so, as in many places the system is no longer serving ratepayers or the public interest. Ratepayers face increasing electricity prices, with communities of color holding disproportionate energy burdens, heightened energy insecurity and poverty that results in loss of life, property, and livelihoods.[9] Further, utilities routinely obstruct distributed clean energy deployment to the detriment of the renewable energy transition desperately needed to address the climate emergency. As the thrust of antitrust law is to protect democracy from concentrated corporate capture, the power utilities wield over competitors, consumers, and even over election systems as detailed below, directly undermine democracy itself.

II. Requested Scope of Investigation

We petition the FTC to inquire into the following two categories of the electric utility industry's practices impacting both renewable energy competition and consumer protection. *See* Addendum 1 for detailed examples of these activities.

1. Unfair Competitive Acts Harming Renewable Electricity Competition

The following utility practices injure competitors seeking to provide renewable electricity and consumers ultimately impacted by lack of energy choice and lack of clean energy in particular.

a. Unfair competitive acts undertaken to protect utility assets and market monopoly by obstructing the deployment of affordable, climate-safe, and resilient electricity for consumers; and
b. Unfair competitive mergers that lead to higher prices, fewer choices, and less renewable energy and energy efficiency innovation for consumers.

2. Unfair and Deceptive Acts Harming Consumer Protection

The following utility practices lead to consumer injury through, among other forms, higher electricity bills in at least two ways. First, utilities' political expenditures are often passed through to consumers via electricity rates under traditional rate-making processes.[10] Second, utilities' political operations result in rent-seeking policies that also drive up consumer rates.

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9 See Trevor Memmott, Sanya Carley, Michelle Graff & David M. Konisky, *Socioeconomic disparities in energy insecurity among low-income households before and during COVID-19 pandemic*, Nature Energy (2021), https://www.nature.com/articles/s41560-020-00763-9; Jean Su & Chris Kuveke, Center for Biological Diversity and Bailout Watch, *Powerless in the Pandemic* (2021), https://bailout.cdn.prismic.io/bailout/6d3d3f34-8a75-4ed5-9d42-225446bd32a8_Powerless_Report_v6.pdf.

10 Matt Kasper & David Pomerantz, Energy and Policy Institute, *FERC issues Notice of Inquiry to understand how it can protect customers from subsidizing trade association political activities*, (Dec. 20, 2021), https://www.energyandpolicy.org/ferc-notice-of-inquiry-trade-association-dues/; Center for Biological Diversity, *Petition for Rulemaking to Amend the Uniform System of Accounts' Treatment of Industry Association Dues before the Federal Energy Regulatory Commission* (2021), https://www.biologicaldiversity.org/programs/energy-justice/pdfs/FERC_Petition_Trade_Group_Dues_031721.pdf; Sammy Roth, *How should utility companies spend*

a. Corrupt dealings, bribery, fraud, and voting interference to pass legislation benefiting utilities;
b. Clandestine election spending for elected officials, including utility regulators, who represent and enrich utility interests; and
c. Masking a utility-led campaign to enrich utilities as being led by public or grassroots efforts.

III. FTC Legal Authority to Investigate the Electric Utility Industry

Article 6(b) of the FTC Act empowers the Commission to conduct wide-ranging studies on industries and collect confidential business information from corporations in question. Sec. 6(b), 15 U.S.C. § 46(b). Through an Article 6(b) investigation, the FTC can exercise its federal jurisdiction to conduct an industry-wide study on electric utility industry abuses toward competitors and consumers, gaining "a deep understanding of competitive conditions" and "throw[ing] light on the need for and wisdom of legislation for corrective action."[11] The FTC's conclusions can then form the basis for further federal or state enforcement or legislative reforms.

The FTC's inquiry into the electric utility industry using its Article 6(b) authority decades ago serves as a useful precedent now. In the late 1920s, the massive consolidation and creation of multi-state private electric utility holding companies resulted in rampant consumer abuse, corruption, and an unrelenting utility campaign against public power competitors. These actions triggered a seven-year FTC investigation into electric utility abuses from 1928-1935, which laid the groundwork for the Public Utility Holding Company Act of 1935.[12]

Over the last few decades, the Commission has regularly grappled with competition and consumer protection concerns in the electric utility industry due to changing technology and regulation. Importantly, though, the FTC has not actively interrogated recent, proliferating utility abuses detailed below—signifying an important area ripe for the Commission's investigation.

The FTC is clear that it is concerned about competition in the electricity utility industry. Among several conferences held on the energy industry,[13] in 2016, the Commission hosted the workshop

your money? A debate rages, L.A. Times, May 13, 2021, https://www.latimes.com/environment/newsletter/2021-05-13/utilities-power-industry-groups-debate-boiling-point.

11 Kelly Signs, Fed. Trade Comm'n, *FTC Milestones: Making the case for reform of public utility holding company laws*, (Nov. 18, 2014), https://www.ftc.gov/enforcement/competition-matters/2014/11/ftc-milestones-making-case-reform-public-utility-holding-company-laws.

12 *See* 1935 FTC Summary Report, supra note 1; *see also* Fed. Trade Comm'n, *Annual Report for the Fiscal Year Ended June 30, 1935* (1935), https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1935/ar1935_0.pdf.

13 The FTC has held public conferences on energy topics, including: Energy Markets in the 21st Century (April 10-12, 2007), materials available at http://www.ftc.gov/bcp/workshops/energymarkets/index.shtml; Carbon Offsets & Renewable Energy Certificates (January 8, 2008), materials available at http://www.ftc.gov/bcp/workshops/carbonoffsets/index.shtml; Market Power and Consumer Protection Issues Involved with Encouraging Competition in the U.S. Electric Industry (September 13-14, 1999), workshop materials

"Something Under the Sun: Competition and Consumer Protection Issues in Solar Energy," in which the Commission recognized that the emerging practice of consumers generating their own electricity via solar energy presented potential issues of competition and consumer protection from electric utilities.[14] There, the Commission explicitly stated (emphasis added):

> *The FTC has had a longstanding interest in electricity markets*, including in solar power. . . . The FTC believes that competition in the marketplace should play a key role. As the nation's competition and consumer protection agency, we want to ensure that rooftop solar, no differently from any other technology or product, develops in an environment of vigorous competition and responsiveness to consumer demand.

In 2000 and 2001, the FTC also issued reports on competition and consumer protection perspectives on electric power regulatory reform, with a focus on retail competition.[15] And in 1977, the FTC examined emerging new technologies, including photovoltaic arrays, for generating electricity and stressed the importance of competition and consumer choice.[16]

Beyond these efforts, the FTC has also separately commented in FERC processes advocating for more competition in the utility industry. In 2017, FTC commented in a FERC proceeding regarding generator interconnection rules and encouraged FERC's adoption of pro-competitive reforms to avoid "discrimination [that] can result in anticompetitive delays and/or increased costs for generation entrants that need to obtain essential interconnections with the transmission grid."[17] In 2016, the FTC and Department of Justice ("DOJ"), submitted joint comments in response to a FERC notice of inquiry regarding merger and market power issues; the FTC and DOJ urged FERC to establish screens that reduce the likelihood that a utility merger approval would result in increased market power.[18] The FTC also

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available at http://www/ftc.gov/bcp/elecworks/index.shtm; and the Department of Justice and FTC workshop on Electricity Policy, held on April 23, 1996.

14 Fed. Trade Comm'n, *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, *Workshop Transcript* (June 21, 2016), https://www.ftc.gov/system/files/documents/public_events/943943/solar_workshop_transcript.pdf.

15 Fed. Trade Comm'n, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform* (2000), https://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform; Fed. Trade Comm'n, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition* (2001), https://www.ftc.gov/sites/default/files/documents/reports/competition-and-consumer-protection-perspectives-electric-power-regulatory-reform-focus-retail/electricityreport.pdf.

16 *See* 1935 FTC Summary Report, *supra* note 1.

17 Fed. Energy Reg. Comm'n, *Comment of the Federal Trade Commission*, Reform of Generator Interconnection Procedures and Agreements, Docket No. RM17-8-000, April 10, 2017, https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-federal-trade-commission-federal-energy-regulatory-commission-concerning-reform/v170004_ferc_interconnection_ftc_staff_comment.pdf.

18 Fed. Energy Reg. Comm'n, *Comment of the U.S. Department of Justice and the Federal Trade Commission*, Modifications to Commission Requirements for Review of Transactions Under Section 203 of the Federal Power Act and Market-Based Rate Applications Under Section 205 of the Federal Power Act, Docket No. RM16-21-000, Nov. 18, 2016, https://www.ftc.gov/system/files/documents/advocacy_documents/comment-federal-trade-

engaged in other relevant FERC dockets, including integration of variable resources,[19] competition issues under RTO jurisdictions,[20] demand response compensation in wholesale energy markets,[21] and transmission ownership and cost allocation of public utilities.[22]

The FTC's most recent action on mergers in the electric industry dates back to 2001 and 1997, where the Commission approved various electric utility mergers based on conditions remedying perceived unfair competitive effects.[23]

In short, the investigation we propose is well within the scope of practices and areas of competition concern that the FTC has engaged in. The patterns of utility abuses discussed below elucidate the necessity for the FTC to commence a new industry-wide investigation that addresses ongoing harms to consumers and competitors that the FTC has foreseen and advocated against.

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commission-us-department-justice-federal-energy-regulatory-commission-ferc/v170000_ferc_market_power_comment_28_nov_2016.pdf.

19 Fed. Energy Reg. Comm'n, *Comment of the Staff of the Federal Trade Commission*, Integration of Variable Energy Resources, Docket No. RM10-11-000, March 1, 2011, https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-federal-energy-regulatory-commission-concerning-integration-variable-energy/110304fercenergyresources.pdf (noting that "Consumers are likely to benefit not only from prices lower than they would have been without these reforms, but also from environmental benefits associated with switching to renewable energy sources.")

20 Fed. Energy Reg. Comm'n, *Comment of the Federal Trade Commission*, Wholesale Competition in Regions With Organized Electric Markets, Docket No. RM07-19-000, AD07-7-000, April 17, 2008, https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-federal-energy-regulatory-commission-concerning-wholesale-competition-regions-organized/v070014b.pdf.

21 Fed. Energy Reg. Comm'n, *Comment of the Federal Trade Commission*, Demand Response Compensation in Organized Wholesale Energy Markets, Docket No. RM10-17-000, 07-19-000, Oct. 1, 2010, https://www.ftc.gov/legal-library/browse/advocacy-filings/ftc-comment-federal-energy-regulatory-commission-concerning-demand-response-compensation-organized.

22 Fed. Energy Reg. Comm'n, *Comment of the Federal Trade Commission*, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Docket No. RM10-23-000, https://www.ftc.gov/legal-library/browse/advocacy-filings/ftc-comment-federal-energy-regulatory-commission-concerning-transmission-planning-cost-allocation.

23 Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment, DTE Energy Company and MCN Energy Group Inc.*, FTC Dkt. No. C-4008 (Mar. 22, 2001), https://www.ftc.gov/sites/default/files/documents/cases/2001/03/dteanalysis.htm; Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment*, Entergy Corporation and Entergy-Koch, LP, FTC Dkt. No. C-3998 (Jan. 31, 2001), https://www.ftc.gov/sites/default/files/documents/cases/2001/01/entergycorpana.htm; Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment, Dominion Resources, Inc., and Consolidated Natural Gas Company*, FTC Dkt. No. C-3901 (Nov. 5, 1999), https://www.ftc.gov/sites/default/files/documents/cases/1999/11/dominionana.htm.

IV. Proposed Outcomes of Investigation

We propose the following outcomes of an Article 6(b) investigation.

1. Collated data from utilities and a survey of the several areas of utility abuse toward consumers and competitors, including but not limited to the categories listed here.

2. A set of recommendations, including:

    a. Recommendation of electric utility abuses that warrant enforcement action by the FTC, DOJ, FERC, state enforcement agencies, or otherwise.

    b. Proposed legislative and/or regulatory action that examines reformed and new structures of power delivery to address utility abuses leading to consumer and competitor harms. These structures may include utility accountability mechanisms through greater regulation and legal enforcement over the *status qu*o utility system; alternative methods to address rather than suppress self-generation of renewable energy, including decentralized models of power delivery and demand management, unbundling generation, transmission and distribution in separate companies, and mandatory RTO membership or coverage; and alternative structures of power delivery, including accountable federal and local public power, co-operative, consumer-owned, peer-to-peer, transactive and de-centralized models, non-profit models, and other energy democracy models.

    c. Proposed legislative or other reform to state action immunity defenses in antitrust law to allow for antitrust enforcement to police utilities' unfair competitive behavior.

    d. Recommendations for FTC and/or other agencies and government bodies to address governance and procedures at the nation's RTOs and ISOs, organizations which wield immense power over competition (or lack thereof) in the nation's electricity markets. RTOs and ISOs are not subject to state regulation, and while their rates are subject to FERC oversight, FERC has exercised limited jurisdiction over governance and procedures at the RTOs and ISOs.

We also note that, in concert with the 1935 FTC investigation of utility holding companies, Congress established a special White House council that reported on the findings of the FTC investigation and made recommendations for legislative reform. We urge the FTC to coordinate with the White House on the feasibility of a similar council here, or, at minimum, to work with other agencies that have complementary electricity expertise, including but not limited to DOJ, FERC, the Department of Energy (DOE), and the national laboratories, to generate robust recommendations for systemic reform.

<u>ADDENDUM 1</u>
<u>ELECTRIC UTILITIES' UNFAIR COMPETITIVE AND DECEPTIVE PRACTICES</u>

This addendum elucidates several categories, with illustrative examples, of unfair competitive and deceptive actions recently taken by electric utilities harming competitors and consumers. They paint a portrait of the pattern of abusive activities that warrant the FTC's Article 6 investigation. Notably, some of these examples have *not* been prosecuted or litigated, while others are being subject to legal enforcement actions. Also, these categories and examples are *not* exhaustive of utility abuses.

I. <u>Unfair Competitive Acts Harming Clean Electricity Competition</u>

A. Unfair competitive acts undertaken to protect utility assets and market monopoly by obstructing the deployment of affordable, climate-safe, and resilient electricity for consumers

1. <u>Blocking transmission development that would enable electricity generation competition</u>

It is well recognized—and in fact, has been recognized by the FTC in 2017[24]—that access to electricity transmission infrastructure is essential to facilitate greater competition in electric generation. Vertically integrated utilities—which exist in approximately two-thirds of states—have obvious incentives to obstruct interconnection to transmission infrastructure and alternative transmission infrastructure, thereby hindering new generation competition while gaining a competitive advantage for their own generation sources. The absence of new generation, in turn, effectively props up incumbent resources, in particular fossil fuel resources, to the detriment of hundreds of gigawatts of new wind, solar and storage waiting in interconnection queues.

Professor Ari Peskoe, who directs the Electricity Law Initiative at Harvard Law School, recently published *Is the Utility Transmission Syndicate Forever?* The paper details how utilities have evaded competition in transmission development by shifting transmission development to local projects that they control within their state-granted service territories.[25] This shift undermines a competitive transmission process and puts an undue burden on captive retail ratepayers, preventing them from accessing the cost reductions that competitive transmission development would unlock. Unfortunately, the problem is getting worse. Research from the Lawrence Berkeley National Laboratory suggests projects now spend about 3.5 years in interconnection queues in some grid operators in the country, as opposed to about 1.9 years in the 2000s.[26]

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24 Fed. Reg. Trade Comm'n, *supra* note 17 ("FTC staff supports FERC's proposals to reform its interconnection rules to facilitate the construction of generation interconnections to the grid. . . The incentives [for utilities] to discriminate [against wind generation entrants] stem from the fact that many transmission owners also own power generation facilities that would compete against generation entrants.").

25 Ari Peskoe, *supra* note 8.

26 Joseph Rand et al., Berkeley Lab, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection As of the End of 2020* (2021), https://eta-publications.lbl.gov/sites/default/files/queued_up_may_2021.pdf.

As one particularly stark example of the lengths to which an incumbent utility will go to preserve this transmission market advantage, in November 2020, it was revealed that Entergy secretly placed a consultant under the guise of a "MISO South customer" to help advance the utility's interests.[27] MISO, or the Midcontinent Independent System Operator, is an independent system operator responsible for operating the power grid across 15 states and the Canadian province of Manitoba.[28] Entergy provides electricity to 3 million utility customers in Arkansas, Louisiana, Mississippi and Texas—all states within MISO.

Renewable energy companies and clean energy advocates are working within the MISO transmission process to better connect MISO North to MISO South, allowing for renewable energy to reach all customers in the greater MISO territory. But access to low-cost renewables on the market could displace Entergy's expensive legacy coal, gas, and nuclear units in its states, and subvert Entergy's ability to justify its need to build new power plants. Regulated utilities like Entergy largely earn profits from the construction of new power plants. To undermine these transmission efforts, Entergy's consultant pretended to be a MISO South customer raising concerns about "transmission projects."[29] In fact, the consultant was speaking and acting on behalf of Entergy.

2. Exerting influence and spending on political efforts that stifle energy competition

Utilities have spent funds to influence political outcomes that obstruct electricity competition.

For example, in 2019, financial documents detailed how Consumers Energy, a Michigan electric and gas utility, contributed $43.5 million to a group called Citizens for Energizing Michigan's Economy ("CEME") since 2014.[30] Documents also revealed that Consumers Energy's Brandon Hofmeister, senior vice president of governmental, regulatory and public affairs, sits on CEME's board of directors. CEME spent the money on television, radio, internet, and print issue advertisements that praised state candidates ahead of certain primary and general elections. The Consumers Energy-funded group targeted certain lawmakers who supported policies that the utility didn't want to be enacted, such as the restoration of previous net metering rates for solar customers and increasing alternative energy suppliers in the state.

In 2021, CEME worked to influence and prevent state legislators from enacting legislation that would have eliminated a 1% cap limiting distributed energy in the investor-owned territories. The current law that caps distributed energy production at 1% of a utility's average in-state peak load for the past 5 years effectively prevents competition from the small-scale distributed energy industry, to the benefit of centralized utilities. CEME's Facebook advertisements were misleading and contained lies about solar

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27 Daniel Tait, Energy and Policy Institute, *Entergy Placed Undercover Consultant to Influence MISO Stakeholder Processes* (Nov. 22, 2020), https://www.energyandpolicy.org/entergy-undercover-consultant-influence-miso-stakeholder/.

28 *About MISO*, MISO, https://www.misoenergy.org/about/ (last visited Apr. 8, 2022).

29 Tait, *supra* note 27.

30 Matt Kasper, Energy and Policy Institute, *Consumers Energy contributed $43.5 million over four years to Citizens for Energizing Michigan's Economy* (June 7, 2018), https://www.energyandpolicy.org/consumers-energy-contributed-43-million-dollars-to-citizens-for-energizing-michigans-economy.

energy and electric blackouts.[31] Fulfilling CEME's goals, the legislation did not advance in the legislature, and the 1% cap on IOU competitive energy sources remains intact.

In fact, Michigan utility DTE Energy has taken advantage of the 1% cap by recently proposing an ultimatum. The utility said it will raise the cap to 3% in its service territory but only in return for new mandatory fees and a reduction of bill credits for rooftop solar customers.[32] (For more examples, see Section I.A.3, *infra*.) The Michigan Public Service commission has not yet made a decision.

Separately and recently, in 2022, the Florida Senate passed legislation that targeted net metering and would harm the ability of distributed solar companies to compete in Florida. Public records obtained and reported by the Miami Herald showed that FPL wrote the legislation.[33](See also Arizona utility effort to stifle distributed energy, Section I.B.3, *infra*.)

To note, some political spending activity by utilities may be legal within the context of state and federal campaign finance regulations. However, utilities have confessed to other illegal acts in similar schemes. (*See* Section II.A: Corrupt dealings, bribery, fraud, and voting interference to pass legislation benefiting utilities, *infra*). Even when not crossing the line into criminality, however, such activities merit further investigation due to the harm they cause to customers and competitors.

3. Imposing fees and unfair rate structures on rooftop solar energy producers that disincentivize customer solar adoption

Across the country, utilities have sought to add flat fees and discriminatory rate structures that make solar projects less attractive due to longer payback periods and decreased economic benefits.[34] The North Carolina Clean Energy Technology Center documents these utility-initiated actions across the country—averaging in the dozens every year.[35]

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31 *Misleading Social Media Ads Bash a Rooftop Solar Bill. They're Backed by Big Utility Companies*, Interlochen Public Radio, Apr. 5, 2021, https://www.interlochenpublicradio.org/news/2021-04-05/misleading-social-media-ads-bash-a-rooftop-solar-bill-theyre-backed-by-big-utility-companies.

32 Tracy Samilton, *Experts Fear DTE Energy's New Proposal Will Kill Rooftop Solar for Future Residential Customers*, Mich. Radio, Feb. 7, 2022, https://www.michiganradio.org/transportation-infrastructure/2022-02-07/experts-fear-dte-energys-new-proposal-will-kill-rooftop-solar-for-future-residential-customers.

33 *Documents show FPL wrote legislation to slow rooftop solar*, Miami Herald, Feb. 7, 2022, https://www.miamiherald.com/article256663672.html. *FPL wants to control Florida solar power*, Miami Herald, Feb. 7, 2022, https://www.miamiherald.com/opinion/editorials/article257892308.html.

34 *See* Greer Ryan, Center for Biological Diversity, Throwing Shade, 10 States Blocking Distributed Solar Development (2018), https://www.biologicaldiversity.org/programs/population_and_sustainability/energy/pdfs/ThrowingShade2018.pdf.

35 N.C. Clean Energy Center, *50 States of Solar, Executive Summary* (2022), https://nccleantech.ncsu.edu/wp-content/uploads/2022/01/Q4-21-Solar-Exec-Summary-Final.pdf;

Flat fees have typically come in the form of: (1) fixed charges, which are monthly flat fees that utilities impose on rooftop solar adopters[36]; (2) minimum bills, which apply if a solar generator's net energy consumption is below a certain threshold[37]; and (3) stand-by fees, where utilities impose stand-by fees on solar generators to cover the cost of acting as a "backup" source of power.[38] State utility commissions must approve such fees as a general practice, and some have done so to varying degrees. (See Addendum 2, *infra*, for discussion on state utility commissions.)

As a recent example where discriminatory fees were not state-sanctioned, Pepco—a subsidiary of energy giant Exelon—has sought to charge new solar customers an average of close to $10,000 each for vague system "upgrades."[39] In a recent proceeding before the D.C. Public Service Commission, D.C.'s Department of Energy and Environment has raised concerns about whether these upgrade fees are justified, and how they are allocated among customers.[40] An investigation of this unfair competitive behavior has yet to be commenced.

Separately, unfair rate structures have been adopted through three different tactics that tilt electricity generation compensation against solar producers: (1) utilities can lower overall compensation for solar energy, either by capping the availability of net metering or adopting below-retail tariff rates; (2) utilities can implement variable rate structures, which make it difficult for solar installers to predict their payback period; (3) utilities can institute demand charges, which are fees based on a user's peak electricity usage, rather than total electricity usage. The result is a monthly fee that eats into the solar adopter's return on exported energy.

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36 Some recent examples include: Lincoln Electric System (Nebraska), where Nebraska regulators approved a fixed charge increase from $21 to $26; Otter Tail Power (North Dakota), where regulators authorized a 75% fixed charge increase from $8 to $14; and Duke Energy Progress (Kentucky), where regulators approved a fixed charge increase from just under $5 to around $11. See AUTUMN PROUDLOVE AT AL., NC CLEAN ENERGY TECHNOLOGY CENTER, 50 STATES OF SOLAR: Q4 2018 QUARTERLY REPORT & 2018 ANNUAL REVIEW 38 (Jan. 2019).

37 For example, Duke Energy (South Carolina), where Duke Energy filed a net metering successor tariff that included a monthly minimum bill of $30, coupled with a shift to time-varying rates for solar generators. *See* Julian Spector, *Duke Energy's SC Net-Metering Replacement Won a Crucial Ally: Rooftop Solar Companies*, GREENTECHMEDIA (Sept. 16, 2020), https://www.greentechmedia.com/articles/read/duke-energys-new-net-metering-replacement-won-a-crucial-ally-rooftop-solar-companies. *See also* Josh Cornfeld & Shayle Kann, *Why a Minimum Bill May Be a Solution to Net Metering Battles*, GREENTECHMEDIA (Jul. 24, 2014), https://www.greentechmedia.com/articles/read/why-the-massachusetts-net-metering-compromise-could-be-a-model-for-other-st.

38 For example, Alabama Power (Alabama) charges a $5/kW/month stand-by fee to rooftop solar generators, which is the highest backup fee of any regulated utility in the country. Julia Simon, *To Some Solar Users, Power Company Fees Are An Unfair Charge*, NPR (June 2, 2019), https://www.npr.org/2019/06/02/728761703/to-some-solar-users-power-company-fees-are-an-unfair-charge.

39 *See* RM40-2020, Chesapeake Solar & Storage Association Residential Solar Interconnection Study Report (Feb. 22, 2022), https://edocket.dcpsc.org/apis/api/Filing/download?attachId=145944&guidFileName=52fa3e11-820d-41bb-9ebd-14e4151f4e96.PDF

40 *See* RM40-2020, District Department of Energy and Environment by Office of the Attorney General Comments (Mar. 28, 2022), https://edocket.dcpsc.org/apis/api/Filing/download?attachId=147654&guidFileName=e215ae5a-6e3e-4c76-8644-76b6e2a49f91.pdf.

A recent example under litigation is a 2015 discriminatory rate structure enacted by the self-regulating Arizona power utility Salt River Project ("SRP"). SRP raised electricity rates for solar customers by 65%, after which the solar rooftop system applications of one solar leasing company plummeted by 96%.[41] The utility's rate hike resulted in the unfair competitive effect of disincentivizing potential solar customers from adopting competitive technologies.

In response to a lawsuit by solar customers challenging the rate hike on antitrust grounds, SRP moved to dismiss on the basis of state action immunity, which requires a defendant to demonstrate that its activity is state authorized. In *Ellis v. Salt River Project*, 24 F.4th 1262 (9th Cir. 2022), the Ninth Circuit held that the self-regulating utility is not entitled to antitrust protection under the state action immunity defense because its unfair competitive actions contravene Arizona state policies encouraging competition. Critically, the Court also reversed the lower court's decision that Mr. Ellis had not pled adequate antitrust injury, finding instead that the utility *can* be liable under antitrust laws for actions taken to reduce solar-energy competition. *Id.* at *23-24. The merits of the antitrust claim have been remanded to the district court. Importantly, SRP also supported the introduction of new state legislation, House Bill 2101 and its companion Senate Bill 1631, that repeals Arizona's pro-competition law and thus resuscitates the state action immunity defense in the *Ellis* case.[42] The proposed legislation, widely supported by utilities, also bars federal antitrust suits against all IOUs in the state.[43] That legislation is pending in the Arizona legislature.

Ellis raises two important points for the purpose of this Petition. First, the Salt River Project solar tax is a textbook example of rate structures that utilities impose to discriminate against solar customers and should be examined broadly across the industry as a category of unfair competitive behavior that leads to concrete anti-competitive effects. Second, the case raises important questions about whether utility actions taken to restrain rooftop solar development are immune from review under the state action immunity defenses.

Importantly, these examples are rampant across the utility industry and paint a portrait of successive generations of utility attacks on rooftop solar customers, who are also competitors—and thus raise novel antitrust arguments that have yet to be pursued.

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41 *SolarCity Corp. v. Salt River Project*, 859 F.3d 720 (9th Cir. 2017); *Salt River Project v. Telsa Energy Operations* (2018) (No. 17-368).

42 State of Arizona, House of Representatives, 55th Legislature, 2022, AZ HB 2101, https://www.azleg.gov/legtext/55leg/2R/bills/HB2101P.pdf.

43 Laurie Roberts, Opinion, *Want to Quit APS? Legislators are Backing a Plan to Make Sure That Can Never Happen*, AZ Central, Feb. 10, 2022, https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2022/02/10/arizona-utilities-team-up-legislators-block-competition/6740768001/; William Driscoll, *Arizona Senate controls the fate of Phoenix anti-solar rate*, March 2, 2022, https://pv-magazine-usa.com/2022/03/02/arizona-senate-controls-the-fate-of-phoenix-anti-solar-rate/.

4. Exercising utility authority over distribution grids to deny or delay distributed energy deployment

In addition to solar fees and discriminatory rate structures, utilities are also using the softer barrier of delaying interconnection for solar customers to pose formidable barriers to solar adoption. Delays in the interconnection process involve onerous connection times, insurance requirements, permitting, fees, and additional inspection requirements that make installing rooftop solar more difficult. Critically, most of these interconnection barriers are not overseen or actively regulated by utility commissions.

A national survey of solar developers published by the Institute for Local Self-Reliance in December 2021 revealed that nearly three-quarters of solar developers experience delays in interconnecting projects to the electric grid, and 85% of survey respondents specifically named utility noncompliance with interconnection procedures as a problem.[44] The delays can increase the cost of distributed solar projects by increasing financing risk, threatening hardware purchase agreements, and causing customers to back out of long-delayed projects. In a rare rebuke by state regulators in Minnesota, investor-owned utility Xcel Energy was fined $1 million for failing to keep pace with a backlog of third-party developed projects.[45] Two years, later, the situation has not improved.[46]

Pepco—an Exelon subsidiary—is a prime example of a utility seeking to undermine the District of Columbia's ambitious distributed energy buildout goals. Recently, the D.C. Attorney General was forced to file a formal complaint with the Public Service Commission over Pepco's multi-faceted campaign to undermine and delay rooftop and community solar projects.[47] The Complaint details how Pepco is, *inter alia*, systematically delaying community solar projects by unlawfully requiring installation of Pepco meters; engaging in widespread billing errors that undercount solar generation and mis-allocate generation belonging to community solar participants; and failing to properly compensate community solar projects for unsubscribed generation.[48] Pepco is also unjustifiably requiring new customers to downsize their proposed systems.[49]

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44 Katie Kienbaum & Josh Farrell, Inst. For Local Self-Reliance, *2021 Local Solar Developer Survey* (2021), https://ilsr.org/wp-content/uploads/2021/12/ILSR-Local-Solar-Developer-Survey-2021-web-res.pdf.

45 Mike Hughlett, *State Regulators Fine Xcel Energy $1M over Dispute with Solar Developers*, Star Tribune, Jan. 21, 2021, https://www.startribune.com/state-regulators-fine-xcel-energy-1m-over-dispute-with-solar-developers/600013483/.

46 Frank Jossi, *Long Waits to Connect to Xcel's Grid are Stalling Minnesota Solar Projects*, Energy News Network, Sept. 20, 2021, https://energynews.us/2021/09/20/long-waits-to-connect-to-xcels-grid-are-stalling-minnesota-solar-projects/.

47 *See* D.C. Office of the Attorney General, *AG Racine Takes Enforcement Action Against Pepco for Systemically Mishandling DC Solar Energy Programs & Overcharging Thousands of DC Households on Their Electric Bills* (Mar. 23, 2022), https://oag.dc.gov/release/ag-racine-takes-enforcement-action-against-pepco.

48 *See* Joint Complaint and Petition for Investigation into Pepco's Community Renewable Energy Facility Practices, GD-2022-01-E (D.C. Pub. Serv. Commn Mar. 23, 2022), https://edocket.dcpsc.org/apis/api/Filing/download?attachId=147448&guidFileName=c21ed028-fde4-4db9-981e-f729d69b5556.pdf

49 *See* RM40-2020, Chesapeake Solar & Storage Association Residential Solar Interconnection Study Report (Feb. 22, 2022), https://edocket.dcpsc.org/apis/api/Filing/download?attachId=145944&guidFileName=52fa3e11-820d-41bb-9ebd-14e4151f4e96.PDF.

Interconnection costs, another project barrier that is generally at the utility's discretion, have risen sharply in New England in recent years. In addition to seeing fees nearly three times higher than in the past, developers have been faced with charges associated with transmission network access, even though their projects interconnect to the lower-voltage distribution system.[50]

5. <u>Blocking access to data essential for communities to evaluate public power and other alternative business models to IOUs that would enable competition</u>

Utilities also engage in practices that obstruct communities from accessing data in order to evaluate alternative power ownership structures outside the IOU. As a prime example, in 2017, the city of Decorah, Iowa, was exploring whether to form a municipal electric utility. To evaluate the potential costs and benefits, the city requested customer, infrastructure, and rate data from Alliant Energy, IOU serving the community. Alliant denied the request, forcing the city to perform its analysis without the data.[51] Nonetheless, the analysis suggested that a public takeover could be cost-effective and better align with the city's clean energy and climate goals.[52]

Instead of sharing its data, Alliant Energy instead published its own feasibility study suggesting that municipalization was not cost-effective.[53] The study, using data withheld from the community, also baked in assumptions of limited rate increase (3% or less) in subsequent years. Alliant spent heavily to market the study results to the community. In May 2018, the vote for a public takeover failed by three votes.[54]

Ten months later, Alliant notified customers of an intent to raise rates by over 24%.[55] In an ongoing investigation before state regulators, the utility has yet to satisfactorily lay out how it will comply with a request to provide accurate information to customers about pending rate increases.[56] In May 2021, a new Municipal Electric Utility Task Force of the city of Decorah again requested utility data necessary to

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50 Lisa Prevost, *New England's Solar Growth is Creating Tension over Who Pays for Grid Updates*, Energy News Network, Apr. 5, 2021, https://energynews.us/2021/04/05/new-englands-solar-growth-is-creating-tension-over-who-pays-for-grid-upgrades/.

51 *Alliant offers alternatives to city's information* request, Decorah News, May 17, 2017, https://decorahnewspapers.com/Content/News/Local-News/Article/Alliant-offers-alternatives-to-city-s-information-request/2/10/42879.

52 Decorah Power, *Municipal Utility Feasibility Study* (January 2018), https://www.decorahia.org/wp-content/uploads/2018/02/Decorah-Power-Report_FINAL-_01-16-18.pdf.

53 *Alliant feasibility study says municipal utility not a good idea*, Decorah News, Feb. 7, 2018, https://decorahnewspapers.com/Content/Home/Home/Article/Alliant-feasibility-study-says-municipal-utility-not-a-good-idea/-2/-2/44735.

54 Peter Maloney, *Decorah, Iowa, city council votes to create municipalization task force*, American Public Power Association, Dec. 10, 2020, https://www.publicpower.org/periodical/article/decorah-iowa-city-council-votes-create-municipalization-task-force.

55 Alliant 2019 Rate Case, https://energydistrict.org/resources/advocacy/alliant-2019-rate-case/; Iowa Utilities Board, Electric Rate Case, Dkt. No. RPU-2019-0001, https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=RPU-2019-0001.

56 Iowa Utilities Board, Dkt No. C-2021-0179.

evaluate a potential municipal utility. Again, the utility refused, even after the city clarified the reasons for its request. A November 2021 petition to the Iowa Utilities Board is pending resolution.[57]

B. Unfair competitive mergers that lead to higher prices, fewer choices, and less renewable energy and energy efficiency innovation for consumers

In the early 2000s, the FTC engaged in conditioning various utility mergers on unfair competitive guardrails.[58] In the last two decades, however, utilities have pursued mergers, and some of the outcomes have ultimately harmed consumers and competitors, despite utility promises of consumer benefit. The FTC should consider prosecuting electric utility merger cases as they arise, particularly in light of further consolidation that can exacerbate the abusive patterns described here.

As an overarching pattern, companies pursuing utility mergers often promise significant financial benefits, to investors and to customers. However, several studies of merger performance suggest that the promised benefits rarely accrue, other than the payout to investors.[59] An analysis of U.S. utility mergers from 1994-2003 found that promised efficiency gains rarely materialize:

> We find clear evidence that acquiring firms do not exhibit superior efficiency prior to merger, nor are acquired firms underperformers. Indeed, much the reverse appears to be the case. Buying firms have poor performance records prior to merger, and appear to seek out and acquire better performing target firms. Even more notably, target firms' post-merger efficiency is not merely not improved, but it actually declines. Acquiring firms record little or no gain to offset these efficiency losses by the acquired firms. [60]

For example, the Pepco-Exelon merger, like most utility mergers, promised a big payout for investors, but a paltry one for customers. When it was proposed in Washington, D.C. in 2014, the utility promised a $1.1 billion return for investors, but just $100 million in customer benefits.[61] In 2021, five years after the merger was completed, Pepco obtained a $108 million rate increase from the Washington,

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57 *Ibid*.; Decorah Iowa, *Letter to Iowa Utilities Board re: Customer and Stakeholder Transparency Request*, Nov. 15, 2021, https://bit.ly/3qXW32k.

58 Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment, DTE Energy Company and MCN Energy Group Inc.*, FTC Dkt. No. C-4008 (Mar. 22, 2001), https://www.ftc.gov/sites/default/files/documents/cases/2001/03/dteanalysis.htm; Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment*, Entergy Corporation and Entergy-Koch, LP, FTC Dkt. No. C-3998 (Jan. 31, 2001), https://www.ftc.gov/sites/default/files/documents/cases/2001/01/entergycorpana.htm; Fed. Trade Comm'n, *Analysis of the Complaint and Consent Order to Aid Public Comment, Dominion Resources, Inc., and Consolidated Natural Gas Company*, FTC Dkt. No. C-3901 (Nov. 5, 1999), https://www.ftc.gov/sites/default/files/documents/cases/1999/11/dominionana.htm.

59 John Farrell, Inst. For Local Self-Reliance, *Mergers and Monopoly: How Concentration Changes the Electricity Business* (2017), https://ilsr.org/electricity-mergers-and-monopoly/.

60 John Kwoka & Michael Pollit, *Industry Restructuring, Mergers, and Efficiency: Evidence from Electric Power* (2007), https://www.eprg.group.cam.ac.uk/wp-content/uploads/2008/11/eprg07081.pdf.

61 Farrell, *supra* note 59.

D.C. Public Service Commission, eliminating all promised customer benefits.[62] The merger came on the heels of Exelon's takeover of Constellation Energy a few years before. That merger was quickly followed by "rate increases of $53 million, $34 million, and $22 million" in the three years following the merger (2012-2014).[63]

Several state regulators have recognized the risks of consolidation to customers, and denied merger attempts, but a broader investigation using the FTC's expertise and perspective is necessary. For example, in Hawaii, regulators denied a potential merger between NextEra and Hawaiian Electric Company, noting the asymmetry of benefits for investors compared to customers, and the ephemeral nature of the promised benefits.[64] Similarly, in December 2021, the New Mexico Public Regulation Commission denied Connecticut-based Avangrid's proposed $8 billion acquisition of PNM Resources. Renewable energy advocates opposed the merger because it would saddle ratepayers with dirty energy debt instead of transitioning to renewable energy.[65]

II. Unfair and Deceptive Acts Harming Consumer Protection

Among the unique features of regulated utilities is that their activities are funded by ratepayers. Regulators rely on just and reasonable rate principles to determine which utility expenses warrant rate recovery, and which should be borne instead by a utility's shareholders as part of the rate-of-return, or profit, that a utility earns from its capital investments. In a utility rate case, the company is required to accurately disclose its expenses to allow regulators to make these determinations.

The ever-increasing size and political power of these private companies has made the policing of these processes increasingly difficult. Rate cases often cover hundreds of millions of dollars in expenditures, and utilities frequently misclassify their expenses. These companies have also become powerful political players in state capitals, wielding their outsized influence to their advantage in myriad ways that state regulators are generally not equipped to police. The proliferation of dark money spending by corporations is also causing ratepayers to lose faith in their utilities and the regulated monopoly system.

Accordingly, an Article 6(b) investigation into the political power of utilities and the means by which they influence policy that harms ratepayers and competition is thus warranted. To note, while some of the examples below are being investigated by the Department of Justice, they are illustrative of a pattern and practice that can best be addressed through an industry-wide investigation that the FTC is uniquely situated to undertake—particularly in light of the antitrust laws' purposes to protect democracy against consolidated corporate interests. Again, the examples below are not exhaustive of utility practices of unfair

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62 Press Release, DC Office of the People's Counsel, *PSC Order Granting Pepco a $108.6 Million Rate Increase Through 2023 is Appalling and Harmful to Ratepayers* (June 4, 2021), https://opc-dc.gov/images/pdf/press_release/PR_PepcoRateCaseReact_6-4-2021.pdf.

63 Farrell, *supra* note 59.

64 Herman Trabish, *NextEra Merger Dead, Hawaii Turns to Realizing a 100% Renewables Future*, Utility Dive, July 25, 2016, https://www.utilitydive.com/news/nextera-merger-dead-hawaii-turns-to-realizing-a-100-renewables-future/423141/.

65 *PNM Avangrid Merger: Not in the Public Interest*, New Energy Economy, https://www.newenergyeconomy.org/copy-of-produced-water-amendment (last visited Apr. 8, 2022).

and deceptive acts. While these practices ultimately harm consumers, they also contour a deeper problem about the influence of corporate utilities on the country's democracy and the obstruction of free and fair elections.

A. Corrupt dealings, bribery, fraud, and voting interference to pass legislation benefiting utilities

1. Paying bribes for bailouts of coal and nuclear power plants

In July 2020, Ohio Speaker of the House Larry Householder and several lobbyists were indicted on charges of participating in a racketeering conspiracy that involved $60 million in bribe payments from utility FirstEnergy in exchange for enacting a new law that provided a $1 billion ratepayer-funded bailout for several nuclear and coal plants owned by a bankrupt FirstEnergy subsidiary.[66] FirstEnergy's regulated distribution companies serve 6 million customers in the Midwest and Mid-Atlantic regions.

Rep. Householder used a portion of the $60 million provided by FirstEnergy to elect a slate of Householder-backed candidates to the Ohio House of Representatives. Those legislators then elected him as the new Ohio House Speaker in January 2019 after a fierce leadership battle.[67] Rep. Householder and the rest of the racketeering operation then used tens of millions of dollars secretly provided by FirstEnergy to ram through House Bill 6, a law that bailed out FirstEnergy's nuclear and coal plants that were economically struggling, as well as other coal plants in which FirstEnergy subsidiaries held partial ownership. American Electric Power has admitted that it also contributed money to entities involved in the corruption scandal, as the utility also benefited from House Bill 6.[68] The law also undid Ohio's standards requiring utilities to use renewable energy for a modest portion of their generation and help customers save electricity via energy efficiency measures.[69]

On July 22, 2021, FirstEnergy admitted as part of a deferred prosecution agreement with federal prosecutors that it paid more than $59 million to a dark money group called Generation Now, which pleaded guilty to racketeering charges in the Householder case.[70] FirstEnergy further admitted that a once-

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66 Press Release, U.S. Attorney's Office, Southern District of Ohio, Ohio House Speaker, Former Chair of Ohio Republican Party, 3 Other Individuals & 501(c)(4) Entity Charged in Federal Public Corruption Racketeering Conspiracy Involving $60 Million (July 21, 2020), https://www.justice.gov/usao-sdoh/pr/ohio-house-speaker-former-chair-ohio-republican-party-3-other-individuals-501c4-entity.

67 Sharon Coolidge et al., *Ohio House Speaker Larry Householder Arrested in $60 Million Bribery Case*, USA Today, July 21, 2020, https://www.usatoday.com/story/news/politics/2020/07/21/ohio-house-speaker-larry-householder-arrested-bribery-case-source/5478219002/.

68 Dave Anderson & David Pomerantz, AEP Contributed to Dark Money Group that Gave Money to Generation Now, Energy and Policy Institute (July 24, 2020), https://www.energyandpolicy.org/aep-generation-now/.

69 Stephen Abbot & Rushad Nanavatty, *HB6 is a Terrible Deal for Ohio*, RMI (Dec. 22, 2020), https://rmi.org/hb6-is-a-terrible-deal-for-ohio/.

70 Forfeiture Allegation, United States v. FirstEnergy Corp., No. 1:21-cr-00086 (S.D. Ohio 2021), ECF No. 1, https://www.documentcloud.org/documents/21018028-usa-vs-firstenergy-corporation-court-filings-2021; Deferred

secret $4.3 million payment influenced official actions Samuel Randazzo took as the chairman of the Public Utilities Commission throughout 2019 and 2020. FirstEnergy only disclosed the payment after the FBI raided Randazzo's house.[71]

FirstEnergy also admitted its customers have paid for lobbying expenses and vendor payments. The full extent of this misuse of ratepayer money remains unclear, and refunds have yet to materialize. [72]

2. Doling political favors for utility-friendly legislation

In July 2020, Exelon's Commonwealth Edison Company ("ComEd"), the largest electric utility in Illinois, agreed to pay $200 million to resolve a federal criminal investigation into a years-long bribery scheme as part of a three-year deferred prosecution agreement.[73] According to the agreement with the Department of Justice, ComEd admitted that it arranged jobs, vendor subcontracts, and payments associated with those jobs and subcontracts for various associates of then-Illinois House Speaker Michael Madigan to influence and reward the official for his efforts to pass legislation favorable to ComEd.[74]

The prosecution agreement specifically mentioned the 2011 Energy Infrastructure Modernization Act ("EIMA"), and the 2016 Future Energy Jobs Act ("FEJA"), as well as the "favorable rate structure" promised to ComEd. ComEd customers may have paid hundreds of millions of dollars more than they would have had to if it was not for 2011 legislation that created formula rates. The law's annual rate-setting timeline also does not allow regulators or other stakeholders to thoroughly examine company filings. Since the first formula rate case, ComEd has added more than $5.1 billion to its rate base.[75] A major component of FEJA was the ratepayer-funded bailout of the Quad Cities and Clinton nuclear power plants owned by ComEd's parent company Exelon.[76] The indictment of Michael Madigan and others further detailed that ComEd benefited from its cozy relationship with Madigan. While the recent indictment mentions EIMA

Prosecution Agreement, United States v. FirstEnergy Corp., No. 1:21-cr-00086 (S.D. Ohio 2021), ECF No. 3, https://www.documentcloud.org/documents/21018028-usa-vs-firstenergy-corporation-court-filings-2021.

71 Dave Anderson, *FirstEnergy Attributed Ohio Utility Regulator's Actions to $4.3 Million Payment,* Energy and Policy Institute (Mar. 3, 2021), https://www.energyandpolicy.org/samuel-randazzo-firstenergy/.

72 Andrew Tobias, *FirstEnergy Says it Charged Customers for Improper Expenses, Pledges to End its Dark Money Political Spending*, Cleveland.com, Feb 18, 2021, https://www.cleveland.com/business/2021/02/firstenergy-says-it-charged-customers-for-improper-expenses-pledges-to-end-its-dark-money-political-spending.html.

73 Press Release, U.S. Attorney's Office, Northern District of Illinois, Commonwealth Edison Agrees to Pay $200 Million to Resolve Federal Criminal Investigation Into Bribery Scheme (July 17, 2020), https://www.justice.gov/usao-ndil/pr/commonwealth-edison-agrees-pay-200-million-resolve-federal-criminal-investigation.

74 Tony Arnold & Dave McKinney, *ComED Charged with Bribery for Steering Jobs, Other Benefits for Speaker Michael Madigan. Speaker Denies the Feds' Claim*, WBEZ Chicago, July 17, 2020, https://www.wbez.org/stories/comed-avoids-prosecution-in-sprawling-corruption-probe-over-its-springfield-lobbying-activities/67133f96-6dc0-4e62-81cf-a9ebc6edad9c; Indictment, United States v. Madigan, No. 1:22-cr-00115 (N.D. Ill. 2021), https://www.justice.gov/usao-ndil/press-release/file/1479536/download.

75 *Report: Guaranteed Profits, Broken Promises*, Illinois PIRG (Dec. 1, 2020), https://illinoispirg.org/reports/ilp/guaranteed-profits-broken-promises.

76 Jeff St. John, *ComEd Agrees to $200M Fine on Federal Bribery Charge*, Green Tech Media, July 17, 2020, https://www.greentechmedia.com/articles/read/comed-agrees-to-200m-fine-on-federal-bribery-charge

and FEJA, it also explained that when the Illinois Commerce Commission interpreted the language of EIMA in a "manner adverse to ComEd" the General Assembly passed legislation, known as Senate Bill 9, to overrule the utility regulators. Madigan supported the legislation.[77]

An analysis of ComEd grants has found nearly $350,000 to a dozen non-profit groups that formally and repeatedly lobbied for utility-backed legislation in Illinois. Some of these charitable groups are overseen by board members who are ComEd executives.[78] The same report found more than two dozen ComEd contractors also submitted documents to House and Senate committees showing their support for utility legislation. Exelon used the same technique when fighting for merger approval with the local utility Pepco in Maryland and Washington, D.C., extracting political support in the proceedings in exchange for grants to local charities. In addition, the merger in Washington, only succeeded after Pepco made a $25 million dollar "naming rights agreement"—allowing D.C. Mayor Muriel Bowser facing a hard deadline to complete a land deal to build the D.C. United Soccer Stadium.[79]

3. Creating "Ghost-Candidates" to keep political allies in power

In December 2021, reporters revealed that utility Florida Power and Light ("FPL") and its parent company NextEra paid millions of dollars to political consultants who used the money to set up 501(c)(4) "dark-money" organizations.[80] The records showed that FPL executives, including the CEO, coordinated closely with the consultants.[81] FPL generates, transmits, and distributes electricity to 11 million people in Florida. With the Florida Senate hanging in the balance in the 2020 election, those utility-funded dark-money groups engineered a brazen scheme to siphon votes from Democrats to third-party "ghost candidates" in three of Florida's 2020 legislative elections, all of which were won by Republicans, two by razor-thin margins.[82] One of the elections involved one of Florida's most prominent climate advocates,

[77] Indictment, United States v. Madigan, No. 1:22-cr-00115 (N.D. Ill. 2021), https://www.justice.gov/usao-ndil/press-release/file/1479536/download.

[78] Dave McKinney, *Multiple Charities Supported by ComEd Lobbied for Bills Favorable to the Utility Giant*, WBEZ Chicago, May 26, 2021, https://www.wbez.org/stories/multiple-charities-supported-by-comed-lobbied-for-bills-favorable-to-the-utility-giant/9cfecb6a-3753-404c-a40e-06ff60f40412.

[79] Patrick Madden, *Was Pepco's $25M Deal for DC United Naming Rights a Case of 'Pay-To-Play?'*, WAMU88.5, Jan.8, 2016, https://wamu.org/story/16/01/08/was_pepcos_25m_deal_for_dc_united_naming_rights_evidence_of_pay_to_play/.

[80] Jason Garcia & Annie Martin, *Florida Power & Light Execs Worked Closely with Consultants Behind 'Ghost' Candidate Scheme, Records Reveal | Special Report,* Orlando Sentinel, Dec. 2, 2021, https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-senate-ghost-candidates-20211202-szjhv7ox6vcmphm6pgd437y52i-htmlstory.html.

[81] Jason Garcia & Annie Martin, *Operative Pitched Secretive political Spending Plan to FPL Exec's Email Alias, Records Reveal,* Orlando Sentinel, Dec. 17, 2021, https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-matrix-dark-money-20211217-v64274eytjeb5hnstdognvqds4-story.html.

[82] Jason Garcia & Annie Martin, *Dark Money Behind Florida 'Ghost' Candidates has Ties to Alabama Political Players, Records Suggest,* Orlando Sentinel, Aug. 11, 2021, https://www.orlandosentinel.com/politics/os-prem-ne-senate-ghost-candidates-alabama-consultants-20210805-drvbnrih6vfotgidwcw6bg5s4q-story.html.

former state Senator José Javier Rodríguez.[83] Sen. Rodríguez lost his election by 32 votes.[84] The Florida Senate is also responsible for confirming the Governor's nominees to the Public Service Commission, which regulates FPL and other electric, gas, and water utilities.[85]

B. Clandestine election spending for elected officials, including utility regulators, who represent and enrich utility interests

Utilities have interfered in foundational democratic election practices through clandestine spending on elected positions that can serve to enrich utility interests.

As a prime example, in 2019, in response to Arizona Corporation Commissioner ("ACC") Sandra Kennedy's subpoena, Pinnacle West's Arizona Public Service ("APS") revealed how the utility sought to influence commission elections. APS is the largest investor-owned utility in Arizona, where, unlike in most other states, the regulators are elected and not appointed. The commissioners in turn set rates and policies for APS and other regulated utilities. One disclosure showed that in 2014, Pinnacle West gave $12.9 million to 16 different political groups. The company said in its letter to the commission that $10.7 million went to groups that contributed to ACC elections that year.[86] The 2014 ACC election was contentious and pitted candidates with different views on how APS and other utilities should treat solar customers against one another. The candidates that APS secretly funded, Tom Forese and Doug Little, won their elections. In the ensuing years, the ACC debated an APS rate application that included a policy regarding the treatment of rooftop solar customers. The ACC voted 4-1 in 2017 to approve of the rate increase on customers and the change in solar policy - Forese and Little voted in favor.[87]

In 2018, two Georgia Public Service Commission ("PSC") incumbents, Tricia Pridemore and Chuck Eaton, were up for election. Southern Company's Georgia Power had benefited from a PSC decision in December 2017 that allowed the utility to continue charging customers for the costs to build

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83 Jon Skolnik, *Mystery of Florida's "Ghost" Candidates Grows: Major Energy Company Linked to GOP Scheme*, Salon, Dec. 11, 2021, https://www.salon.com/2021/12/11/mystery-of-floridas-ghost-candidates-grows-major-energy-company-linked-to-scheme/.

84 Patricia Mazzei, *How a Sham Candidate Helped Flip a Florida Election*, N.Y. Times, Mar. 19, 2021, https://www.nytimes.com/2021/03/19/us/florida-senate-race-fraud.html.

85 *3/29/21 Florida Public Service Commission Nominating Council*, The Florida Channel (Mar. 9, 2021), https://thefloridachannel.org/videos/3-29-21-florida-public-service-commission-nominating-council/.

86 Ryan Randazzo, *APS Acknowledges Spending Millions to Elect Corporation Commission Members, After Years of Questions*, AZ Central, Mar. 29, 2019, https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/; Joe Smyth, *APS Political Spending Soared Under Don Brandt. Will that Change with a New CEO?*, Energy and Policy Institute (Aug. 30, 2019), https://www.energyandpolicy.org/aps-political-spending-soared-under-don-brandt-will-that-change-with-a-new-ceo/.

87 Press Release, Arizona Corporation Commission, Commission Approves APS Rate Case Which Offers Rate Options, Low-income Assistance, and Incentivizes the Use of New Technology (Aug. 16, 2017), https://azcc.gov/docs/default-source/news-release-files/2017/2017-08-16-commission-approves-aps-rate-application.pdf?sfvrsn=49494a6a_2.

the new Vogtle nuclear power plant units.[88] Plant Vogtle was and remains billions of dollars over budget and years behind schedule. Lindy Miller, who challenged Eaton, called Vogtle "a bad deal for Georgia" while Dawn Randolph, who challenged Pridemore, said she would not support the continued construction of the nuclear expansion project.[89]

Georgia law prohibits the regulated utilities like Georgia Power from making direct contributions to their regulators at the PUC; however, Pridemore's and Eaton's campaigns received thousands of dollars from people or companies associated with Georgia Power.[90] Both Pridemore and Eaton narrowly defeated Randolph and Miller, with Eaton winning in a statewide runoff.[91] The advocacy arm of the Nuclear Energy Institute, which includes Georgia Power and Southern Company as members, contributed $1 million to "Georgians for a Brighter Future" to help Eaton secure victory in the runoff.[92] A year later, the PSC voted again to raise Georgia Power customer rates by about $1.8 billion over the next three years and allowed the company to continue making up to about 12% in annual profit.[93] This activity may have been legal within the context of state and federal campaign finance regulations; whether it was or not, similar ongoing activities merit further investigation due to the harm caused to customers and competitors.

C. Masking a utility-led campaign enriching utilities as being led by public or grassroots efforts

5. <u>Paying actors to support a gas plant proposal</u>

In May 2018, reporters revealed that Entergy's sub-contractors paid actors to feign public support in front of the New Orleans City Council for the company's controversial $210 million gas-fired power

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88 Anastachiah Ondieki, *Georgia Power's Vogtle Gets Approval to Continue with New Conditions*, Atlanta Journal-Constitution, Dec. 21, 2017, https://www.ajc.com/news/plant-vogtle-construction-approval-depends-federal-tax-breaks/y2lZawiCIui2p5KC6OfXwN/.

89 Heather Pohnan, *Where the 2018 Candidates Stand on Energy: Democratic Nominee for Georgia PSC District 5 – Dawn Randolph*, Cleanergy.org Blog (Sept. 5, 2018), https://cleanenergy.org/blog/where-the-2018-candidates-stand-on-energy-democratic-nominee-for-georgia-psc-district-5-dawn-randolph/; Dave Schechter, *Lindy Miller Campaigns to Make Georgia History*, Atlanta Jewish Times, May 9, 2018, https://www.atlantajewishtimes.com/lindy-miller-campaigns-to-make-georgia-history/.

90 Daniel Tait, *Big-Dollar Contributors with Ties to Georgia Power and Southern Company Bet on Pridemore, Eaton for Georgia PSC*, Energy and Policy Institute (May 1, 2018), https://www.energyandpolicy.org/big-dollar-contributors-with-ties-to-georgia-power-southern-company-bet-on-pridemore-eaton-for-georgia-psc/; Iulia Gheorghiu, *Vogtle in Sight as Money Pours into Georgia Regulator Race*, Utility Dive, Nov. 2, 2018, https://www.utilitydive.com/news/vogtle-in-sight-as-money-pours-into-georgia-regulator-race/540908/.

91 *Georgia Public Service Commission Election, 2018*, Ballotpedia, https://ballotpedia.org/Georgia_Public_Service_Commission_election,_2018 (last visited Apr. 8, 2022).

92 Mary Landers, *Pro-nuclear Group Dumps $1 Million into PSC Runoff*, Savannahnow, Nov. 27, 2018, https://www.savannahnow.com/story/news/2018/11/27/pro-nuclear-group-increases-donation-to-1-million-in-ga-psc-runoff/7984935007/.

93 Emma Hurt, *Georgia Power Customers to See Monthly Bills Rise, Starting Next Year*, WABE, Dec. 18, 2019, https://www.wabe.org/georgia-power-customers-to-see-monthly-bills-rise-starting-next-year/.

plant proposal. New Orleans is one of the only cities in the United States to regulate an investor-owned energy utility when there is also a state-level agency in place.[94]

An independent investigation released in October 2018, and with which Entergy did not fully cooperate, concluded that the utility company "knew or should have known" about the astroturfing—refuting the results of Entergy's internal investigation that it released earlier that year. In October 2017, two weeks before a City Council hearing, Entergy New Orleans' then-CEO Charles Rice Jr., sent a text message to Yolanda Pollard, a communications manager for Entergy, asking how many people the company's contractor, The Hawthorn Group, could recruit for the meeting. Pollard said Hawthorn had secured "50 people and 10 speakers." The independent investigators stated, "The information recovered and reviewed to date . . . indicates that payment (and the obligation to pay) for these 'supporters' went from Entergy, through Entergy's vendors, and onto these individuals in order to secure attendance and participation as speakers on Entergy's behalf at public hearings that occurred on October 16, 2017, and February 21, 2018."

Entergy also mobilized recipients of its foundation to support the gas plant. Nine of the organizations that testified at the council's hearing on Entergy's behalf in October 2017 received charitable donations by the Entergy Charitable Foundation. Some of those organizations disclosed the donations by Entergy at the gas plant hearings, but others did not.[95]

Community organizations requested that the City Council reject the gas plant and instead force Entergy to prioritize the transmission and distribution system and analyze the combination of energy efficiency and renewable energy resources that could meet the city's needs.[96]

6. <u>"Goodwill" giving to charities that receive utility donations in exchange for supporting utility positions</u>

Throughout 2019, various Michigan organizations began attempts to influence the state Public Service Commission ("PSC") as the regulators faced dockets regarding DTE Electric's rate case application and integrated resource plan. The rate increase proposal included a change to the utility's compensation policy for rooftop solar customers. DTE's proposal would have significantly reduced the rate at which a customer would be compensated for the electricity their solar panels send back to the grid and have added a fee on customers who install rooftop solar—two policies that restrict the growth of

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[94] Michael Isaac Stein, *Actors Were Paid to Support Entergy's Power Plant at New Orleans City Council Meetings*, The Lens, May 4, 2018, https://thelensnola.org/2018/05/04/actors-were-paid-to-support-entergys-power-plant-at-new-orleans-city-council-meetings/.

[95] Daniel Tait & David Pomerantz, *Entergy Paid Actor Scandal Widens, Nonprofits Used to Support Gas Plant*, Energy and Policy Institute (May 11, 2018), https://www.energyandpolicy.org/entergy-paid-actor-scandal-widens/.

[96] Forest Bradly-Wright, Guest Column, *Entergy Misleads Council, Public on Power Plant*, Nola.com, Feb. 18, 2018, https://www.nola.com/article_7472ec54-0b89-5aaa-99d5-06ae81839e3c.html.

distributed renewable energy resources.[97] Additionally, DTE weighted its integrated resource plan toward more gas power plants and less renewable energy.[98]

The organizations that waged a campaign to support DTE's positions were part of a group called the Michigan Energy Promise. Organizations listed on Michigan Energy Promise's "allies" page were primarily churches, chambers of commerce, and non-profits that advocate for communities of color. Many of the organizations have either received money from DTE Energy's foundation, list the utility as a corporate sponsor on their websites, or include a utility employee as a member of their board. Additionally, documents in the Michigan non-profit corporation database detail how Michigan Energy Promise originated from another entity called Michigan Energy First, whose president is DTE Energy's Vice President of Corporate and Government Affairs Renze Hoeksema, and whose treasurer is Theresa Uzenski, a manager of regulatory accounting at DTE Energy.

Ultimately, the PSC rejected DTE's charge on people with rooftop solar but approved a reduction in payout compensation for customers that generate excess electricity.[99]

As another example, in 2021 and 2022, a California coalition composed of community and business groups emerged to influence the solar debate as regulators consider rules that would reduce the financial benefits of owning rooftop systems.[100] An analysis from Inside Climate News ("ICN") revealed that the coalition, Affordable Clean Energy for All, is not a grassroots movement but rather a "public relations campaign sponsored by big utility companies that stand to benefit from policies that hurt rooftop solar." ICN found that 71 members of Affordable Clean Energy for All received $1.67 million in donations or some other form of financial support from at least one of the California electric utilities since 2020.[101] After a December 2021 proposed decision was released, which presented new monthly charges and changes to incentives for rooftop solar, the coalition spent nearly $840,000 on television and radio ads to air to reinforce the utility's talking points.[102]

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97 Andy Balaskovitz, *Utility-linked Group Seeks to Dismantle Net Metering in Michigan*, Energy News Network, Mar. 4, 2019, https://energynews.us/2019/03/04/utility-linked-group-seeks-to-dismantle-net-metering-in-michigan/.

98 Matt Kasper & David Pomerantz, *DTE Energy Aims to Continue its Gas Buildout as it Proposes to Leave Coal by 2040*, Energy and Policy Institute (Apr. 2, 2019), https://www.energyandpolicy.org/dte-energy-irp-details-its-gas-buildout/.

99 Keith Matheny, *You'll be Paying More on Your DTE Power Bill. Here's Why.,* Detroit Free Press, May 2, 2019, https://www.freep.com/story/news/local/michigan/2019/05/02/dte-rate-increase-michigan/3654248002/.

100 Press Release, Affordable Clean Energy For All, Coalition Says Solar Rooftop Growth is Possible Without Forcing Low-income Electricity Customers to Subsidize Wealthier Homeowners' Solar Panels (Feb. 24, 2021), https://fixthecostshift.com/coalition-press-release/.

101 Anne Marshall-Chalmers & Dan Gearino, *Is the California Coalition Fighting Subsidies for Rooftop Solar a Fake Grassroots Group*, Inside Climate News, Feb. 8, 2022, https://insideclimatenews.org/news/08022022/is-the-california-coalition-fighting-subsidies-for-rooftop-solar-a-fake-grassroots-group/.

102 Proposed Decision, Decision Revising Net Energy Metering Tariff and Subtariffs, Rulemaking 20-08-020 Before the Public Utilities Commission of the State of California (Dec. 13, 2021), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M430/K903/430903088.PDF; Marshall-Chalmers & Gearino, *supra* note 101.

The California Public Utilities Commission delayed its vote on the proposed decision "to analyze the record and consider revisions to the proposed decision based on party comments."[103]

7. Creating front group to preserve the future of fossil gas

Sempra's Southern California Gas ("SoCalGas"), which is the nation's largest gas distribution utility, has engaged in various activities to defend the company's business interests in the face of competing technologies.

Beginning in 2017, SoCalGas waged a successful effort to stop the ports of Los Angeles and Long Beach, the busiest in the country, from reducing emissions from trucks and other infrastructure. Internal company emails detailed how the utility recruited Latino and Asian-American politicians to support natural gas-fueled trucks rather than electric vehicles.[104] The company ultimately was successful as port officials voted to exempt natural gas trucks from a fee levied on other trucks in 2020.

In 2019, a state energy commission report determined that building electrification was "a key strategy" for reducing the state's climate impacts and that it "offers the most promising path to achieving [greenhouse gas] reduction targets in the least costly manner."[105] In response, SoCalGas funded an organization called Californians for Balanced Energy Solutions ("C4BES") to promote the continued investment and use of the gas system to local communities and governments.[106] Documents detailed how SoCalGas targeted "key Latino leaders" to support C4BES, and pushed the idea of "renewable" gas as an alternative method to reducing emissions. Internal C4BES emails revealed the acknowledgement that members of the front group knew "renewable" gas is too expensive and "doesn't make all that much sense from an environmental standpoint."[107] The Public Advocates Office, an independent branch of the California Public Utilities Commission ("CPUC"), said SoCalGas' tactics to fight electrification have included lying to regulators, undermining efficiency codes and standards, and "astroturfing."[108]

8. Fabricating support for a utility merger, utility rate application

In 2018, a flood of emails were sent to lawmakers in support of Dominion Energy's proposed acquisition of SCANA Corporation, the holding company of South Carolina Electric & Gas. The emails urged the legislators not to take action that could derail the sale to Dominion. The emails were crafted by

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[103] *California Delays Decision on Rooftop Solar Policy Reform*, Reuters, Feb. 4, 2022, https://www.reuters.com/world/us/california-delays-decision-rooftop-solar-policy-reform-2022-02-04/.

[104] Colby Bermel, *How SoCalGas Leveraged Mayors and Minority Groups to Score a Fossil Fuel Win*, Politico, Sept. 24, 2020, https://www.politico.com/states/california/story/2020/09/24/how-socalgas-leveraged-mayors-and-minority-groups-to-score-a-fossil-fuel-win-1304131.

[105] *Building Decarbonization Assessment*, California Energy Commission, https://www.energy.ca.gov/data-reports/reports/building-decarbonization-assessment (last visited Apr. 8, 2022).

[106] Susie Cagle, *US Gas Utility Funds 'Front' Consumer Group to Fight Natural Gas Bans*, Guardian, July 26, 2019), https://www.theguardian.com/us-news/2019/jul/26/us-natural-gas-ban-socalgas-berkeley.

[107] *Id.*

[108] Molly Peterson, *SoCalGas Admits Funding 'Front' Group in Fight for Its Future,* KQED, July 31, 2019, https://www.kqed.org/science/1945910/socalgas-admits-funding-front-group-in-fight-for-its-future.

the Consumer Energy Alliance ("CEA"), a pro-industry group whose members include Dominion and is operated by HBW Resources.[109] The merger was completed in January 2019.[110] In August 2020, Dominion South Carolina filed an application to increase rates on its newly acquired customers.[111] In July 2021, a settlement was reached in the rate case before the Public Service Commission ("PSC").[112]

This was not the first time HBW Resources' CEA creates spurious letters of support for a utility's position. In 2014, CEA was caught submitting a fraudulent petition that attacked net metering and defended utility companies' fixed-rate increase proposals in Wisconsin. CEA submitted names of 2,500 state residents that "supported" the utilities' proposals. Subsequent reporting revealed that certain people on the CEA petition were in fact *against* the proposal.[113] The PSC then dismissed the petition, saying it would not be included in the record.

Separately, in 2016, a group of Ohio property owners called for an investigation into CEA after the group sent 347 letters to FERC to demonstrate support for a pipeline proposed by Nexus Gas Transmission, using the names of local residents, including an Ohio man who has been dead since 1998.[114] DTE Energy and Spectra Energy, which has since been purchased by Enbridge, are co-owners of the Nexus pipeline. Both were members of CEA.[115] (DTE Energy spun-off its midstream pipeline business in 2021.[116])

As a final example, during the Pepco/Exelon merger in proceedings in Washington, D.C., Exelon paid operatives to pick up residents from largely African-American retirement homes to "turn out" as supporters of the merger at the proceedings. When questioned why they attended the merger proceedings

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109 Jamie Lovegrove, *Fraudulent Emails Backing South Carolina Utility Sale Still Being Sent to Lawmakers*, Post and Courier, Feb. 27, 2018, https://www.postandcourier.com/politics/fraudulent-emails-backing-south-carolina-utility-sale-still-being-sent-to-lawmakers/article_63bcc09e-1c02-11e8-84dc-97d7df1ee876.html.

110 Press Release, Dominion Energy, Dominion Energy Combines With SCANA Corporation (Jan. 2, 2019), https://news.dominionenergy.com/2019-01-02-Dominion-Energy-Combines-With-SCANA-Corporation.

111 South Carolina Office of Regulatory Staff, *Dominion Energy South Carolina Rate Increase Request*, Docket No. 2020-125-E (2020), https://ors.sc.gov/sites/default/files/Documents/Consumers/Electric/DESC%20Rate%20increase%20Overview_10.06.2020.pdf.

112 *Settlement Reached in Dominion Energy Rate Case*, South Carolina Office of Regulatory Staff (July 2, 2021), https://ors.sc.gov/news/2021-07/settlement-reached-dominion-energy-rate-case.

113 Kate Sheppard, *Lobbyist-Tied Group Accused of Faking Support for Potentially Higher Energy Billis*, Huffpost, Oct. 31, 2014, https://www.huffpost.com/entry/solar-energy-policy-wisconsin_n_6084604.

114 Michael Sangiacomo, *Nexus Pipeline Opponents Urge U.S. Postal Service to Investigate Lobbying Group (Photos)*, Cleveland.com, Sept. 16, 2016, https://www.cleveland.com/metro/2016/09/nexus_pipeline_opponents_urge_us_postal_service_to_investigate_lobbying_group_photos.html.

115 *Members*, Consumer Energy Alliance (Aug. 16, 2019), https://web.archive.org/web/20190816112107/https://consumerenergyalliance.org/about/our-members/.

116 Press Release, DTE Energy, DT Midstream Spin-Off from DTE Energy is Complete (July 1, 2021), https://ir.dteenergy.com/news/press-release-details/2021/DT-Midstream-Spin-Off-from-DTE-Energy-is-Complete/default.aspx

in green "Support the Merger" t-shirts, the individuals stated they were there for the cash payment and free food, but knew nothing about the merger.[117]

[117] Rachel Kurzius, *The Endgame of the Pepco-Exelon Merger Involves Free Hats and Cocktail Weenies*, Dcist, Dec. 10, 2015, https://dcist.com/story/15/12/10/the-endgame-of-the-pepco-exelon-mer/.

<u>ADDENDUM 2</u>
<u>ELECTRIC UTILITY MERGERS AND "REVOLVING DOOR" PRACTICES, HIGHLIGHTING URGENCY FOR FTC ACTION</u>

While the unfair competitive conduct of private companies is typically policed through our nation's bedrock antitrust laws, state-regulated utilities are generally exempt from these legal restrictions through their state-granted monopoly charters and a defense of state-action immunity carved out by courts.[118] Instead, although IOUs have precisely the same incentives for unfair competitive conduct as do other companies, the public relies on state and federal utility regulators to stand in for antitrust enforcement, expecting these regulators to serve the public interest and protect consumers from harm.

Unfortunately, however, two developments in the last two decades have seriously undermined the effectiveness of this alternative state enforcement mechanism to protect consumers and the public interest.

First, there has been a massive consolidation of the utility sector since the repeal of PUHCA in 2005, creating ever-larger companies that exercise monopoly market power across many states.[119] As utility companies have grown in size and power, it has become increasingly difficult for single-state utility commissions to provide effective oversight.[120] Per Addendum 1, Section B, the FTC should consider action against future electric utility mergers as a means to address this issue.

Second, the "revolving door" between regulated utilities and their regulators has made it increasingly difficult to rely on state regulators to serve as effective enforcers of unfair competitive behaviors. Regulators frequently move back and forth between the utility company executive suite and the utility commission overseer role, leading to private interest capture over the industry's regulators. This pervasive practice, which seriously undermines the effectiveness of state utility regulators to protect consumers and the public interest, further demonstrates the urgency for the FTC and other federal bodies to exercise meaningful oversight in this area.

For example, on the federal level, in recent years numerous FERC regulators left the agency to work or assist the industries they were regulating. FERC Commissioner Philip Moeller stepped down in October 2015 and then joined the Edison Electric Institute, the trade association that represents all of the

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118 The thrust of state action immunity was first set forth in *Parker v. Brown*, 317 U.S. 341 (1943), where the Supreme Court recognized a limited defense to antitrust liability to respect federalism and state sovereignty principles. Because, the Court found, "nothing in the language of the Sherman Act . . . or in its history' suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies, the [Sherman] Act should not be read to bar States from imposing market restraints 'as an act of government.'" *FTC v. Phoebe Putney Health Sys., Inc*., 568 U.S. 216, 224 (2013) (quoting *Parker*, 317 U.S. at 350, 352). Nonetheless, the Supreme Court has also been emphatic that the defense is "disfavored," given the competition principles "fundamental [to] national values." *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 1110 (2015). While direct arms of the state (e.g., the legislature) are not covered by the antitrust laws, the Supreme Court has imposed additional requirements on sub-state entities and private parties that seek to invoke state action immunity—and has steadily narrowed the defense over time.

119 *See generally* Hempling, *supra* note 5.

120 Peskoe, *supra* note 7.

nation's investor-owned electric companies.[121] FERC Commissioner Colette Honorable left FERC in June 2017 and was elected to the Board of Directors of Southern Company in September 2020.[122] FERC Commissioner Patrick Wood III left the agency in 2005 and became non-executive Chairman of Dynegy's Board of Directors in 2012.[123] FERC Commissioner Curtis Hebert Jr. ended his FERC tenure in 2001 and then joined Entergy.[124]

There is a similar revolving door at the state level, where commissioners and prominent staff at commissions have also left the public sector to then receive compensation from the utility industry. Former California Commissioner Susan Kennedy's company signed a contract with Southern California Edison to create energy storage facilities for the utility.[125] Iowa Utilities Board member Nick Wagner left the regulatory agency in 2020 to join a position with Black Hills Energy, a utility company regulated by the IUB.[126] Former Arizona Corporation Commission regulator Bob Stump now represents the interests of Arizona utilities in front of the commission.[127] Shelby Linton-Keddie was legal counsel to Pennsylvania Utility Commissioner Pamela Witmer before joining Pennsylvania-based Duquesne Light Company and then the Edison Electric Institute. Scott Storms, a general counsel and chief administrative law judge at the Indiana Utility Regulatory Commission (IURC), left the agency to work for Duke Energy, which is regulated by the IURC. Scott was fired after two months after reporters revealed Scott was negotiating a

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121 Robert Walton, *Commissioner Moeller to Leave FERC at End of Month; Successor Unclear*, Utility Dive, Oct. 7, 2015, https://www.utilitydive.com/news/commissioner-moeller-to-leave-ferc-at-end-of-month-successor-unclear/406884/; Edison Electric Institute, *Biography of Philip D. Moeller*, https://www.eei.org/about/Documents/Moeller.pdf.

122 Kristi Shallenberger, *And Then There Was One: FERC Commissioner Honorable Steps Down Today*, Utility Dive, June 30, 2017, https://www.utilitydive.com/news/and-then-there-was-one-ferc-commissioner-honorable-steps-down-today/446234/; *Energy Policy Expert Colette Honorable to Join Southern Company Board of Directors*, Southern Company (Sept. 16, 2020), https://www.southerncompany.com/newsroom/business-leadership/colette-honorable.html.

123 *Dynegy Creditors Vote Overwhelmingly in Support of the Company's Plan of Reorganization, Dynegy Announces Proposed Post-Emergence Board of Directors*, Businesswire, Aug. 27, 2012, https://www.businesswire.com/news/home/20120827005569/en/Dynegy-Creditors-Vote-Overwhelmingly-in-Support-of-the-Company's-Plan-of-Reorganization-Dynegy-Announces-Proposed-Post-Emergence-Board-of-Directors.

124 *Curt Hébert, Jr.*, Brunini Attorneys at Law, https://www.brunini.com/lawyers/curt-hebert-jr/ (last visited Apr. 8, 2022). These are just some of many examples, which also include former FERC Commissioner Tony Clark joining the Board of Northwestern, and former FERC Commissioner Nora Mead Brownwell chairing PG&E's Board. See Wilkinson, Baker, Knauer LLP, *Tony Clark Named to Board of Directors for NorthWestern Energy*, Dec. 7, 2016, https://www.wbklaw.com/news/tony-clark-named-to-board-of-directors-for-northwestern-energy-december-7-2016/; RTO Insider, *Former FERC Commissioner Brownell Named PGE Chair*, April 4, 2019, https://www.rtoinsider.com/articles/22019-former-ferc-commissioner-brownell-named-pge-chair.

125 George Avalos, PUC Critics Cite Concerns Over 'Revolving Door,' Mercury News, Mar. 21, 2015, https://www.mercurynews.com/2015/03/21/puc-critics-cite-concerns-over-revolving-door/.

126 *IUB Board Member Nick Wagner Accepts Position with Black Hills Energy*, Iowa Utilities Board (June 23, 2020), https://iub.iowa.gov/press-release/2020-06-23/iub-board-member-nick-wagner-accepts-position-black-hills-energy.

127 David Pomerantz, *Revolving Door Swings Former AZ Utility Commissioner Bob Stump Back into the Arms of APS*, Energy and Policy Institute (July 6, 2018), https://www.energyandpolicy.org/bob-stump-revolving-door-acc-aps/

job for himself while involved in a case regarding the utility's cost overruns at the Edwardsport coal-gasification plant.[128]

In sum, the sheer size and dominance of multi-state utility companies, and their remarkably close ties with the very regulators who are supposed to serve as their principal antitrust enforcers, demonstrate that only the FTC is in a position to police the many forms of unfair competitive and consumer-harming behavior we have discussed. The underlying ethos of antitrust laws to safeguard democracy from undue corporate influence warrants the FTC's use of these laws and its Article 6(b) investigative authorities to carefully examine the electric utility industry today.

[128] John Russell, *Lawyer Reprimanded in Utility Ethics Scandal*, IndyStar, Feb. 6, 2014, https://www.indystar.com/story/news/politics/2014/02/06/lawyer-reprimanded-in-utility-ethics-scandal/5260111/.

CONVENING PETITIONERS

Anya Schoolman
Executive Director
SOLAR UNITED NEIGHBORS

David Pomerantz
Executive Director
ENERGY AND POLICY INSTITUTE

John Farrell
Co-Director
INSTITUTE FOR LOCAL SELF-RELIANCE

Jean Su
Energy Justice Director & Staff Attorney
Howard Crystal
Energy Justice Legal DIrector
CENTER FOR BIOLOGICAL DIVERSITY

Sandeep Vaheesan
Legal Director
OPEN MARKETS INSTITUTE

ADDITIONAL PETITIONERS

198 METHODS

350 BAY AREA ACTION

350 MADISON

350 NEW ORLEANS

350 TRIANGLE

ACTIVE SAN GABRIEL VALLEY

ALASKA ENVIRONMENT

ALASKA ENVIRONMENT RESEARCH & POLICY CENTER

ALLIANCE FOR A GREEN ECONOMY

ALLIANCE FOR AFFORDABLE ENERGY

ANIMALS ARE SENTIENT BEINGS INC

ANIMALS ARE SENTIENT BEINGS INC

ARIZONA PIRG

ARIZONA PIRG EDUCATION FUND

ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION (ARISEIA)

ARIZONANS FOR COMMUNITY CHOICE

AURORA SOLAR

BAN SUP

BENEDICTINE UNIVERSITY FACULTY

BERGEN COUNTY IMMIGRATION STRATEGY GROUP

CALPIRG

CALPIRG EDUCATION FUND

CATALYST MIAMI

CENTER FOR ASIAN STUDIES (CASE) – UNIVERSITY OF COLORADO

CHAPEL HILL ORGANIZATION FOR CLEAN ENERGY

CHURCH WOMEN UNITED IN NEW YORK STATE

CITIZENS ACTION COALITION OF IN

CITIZENS FOR PENNSYLVANIA'S FUTURE

CITIZENS UTILITY BOARD OF MICHIGAN

CLCARTY CONSULTING

CLEAN UP THE RIVER ENVIRONMENT (CURE)

CLEAN VIRGINIA

CLEVELAND COMMUNIST PARTY USA

CLEVELAND POWER OF WIND ACTION TEAM

CLIMATE ACTION ALLIANCE OF THE VALLEY

COALITION OF COMMUNITY ORGANIZATIONS

COMMUNITY POWER

CONNPIRG

CONNPIRG EDUCATION FUND

COPIRG

COPIRG FOUNDATION

DON'T WASTE ARIZONA

DREAM CORPS GREEN FOR ALL

EARTH CARE

EARTHKEEPER HEALTH RESOURCES

EAST CLEVELAND CITY COUNCIL

ELDERS CLIMATE ACTION

ENERGY ALABAMA

ENERGY CHOICE COALITION

ENERGY DEMOCRACY STAFF

ENVIRONMENT AMERICA

ENVIRONMENT AMERICA RESEARCH & POLICY CENTER

ENVIRONMENT ARIZONA

ENVIRONMENT ARIZONA RESEARCH & POLICY CENTER

ENVIRONMENT CALIFORNIA

ENVIRONMENT CALIFORNIA RESEARCH & POLICY CENTER

ENVIRONMENT COLORADO

ENVIRONMENT COLORADO RESEARCH & POLICY CENTER

ENVIRONMENT CONNECTICUT	**ENVIRONMENT CONNECTICUT RESEARCH & POLICY CENTER**
ENVIRONMENT FLORIDA	**ENVIRONMENT FLORIDA RESEARCH & POLICY CENTER**
ENVIRONMENT GEORGIA	**ENVIRONMENT GEORGIA RESEARCH & POLICY CENTER**
ENVIRONMENT ILLINOIS	**ENVIRONMENT ILLINOIS RESEARCH & EDUCATION CENTER**
ENVIRONMENT IOWA	**ENVIRONMENT IOWA RESEARCH & POLICY CENTER**
ENVIRONMENT MAINE	**ENVIRONMENT MAINE RESEARCH & POLICY CENTER**
ENVIRONMENT MARYLAND	**ENVIRONMENT MARYLAND RESEARCH & POLICY CENTER**
ENVIRONMENT MASSACHUSETTS	**ENVIRONMENT MASSACHUSETTS RESEARCH & POLICY CENTER**
ENVIRONMENT MICHIGAN	**ENVIRONMENT MICHIGAN RESEARCH & POLICY CENTER**
ENVIRONMENT MINNESOTA	**ENVIRONMENT MINNESOTA RESEARCH & POLICY CENTER**

ENVIRONMENT MISSOURI

ENVIRONMENT MISSOURI RESEARCH & POLICY CENTER

ENVIRONMENT MONTANA

ENVIRONMENT MONTANA RESEARCH & POLICY CENTER

ENVIRONMENT NEVADA

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ENVIRONMENT NEW MEXICO

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ENVIRONMENT TEXAS

ENVIRONMENT TEXAS RESEARCH & POLICY CENTER

ENVIRONMENT VIRGINIA

ENVIRONMENT VIRGINIA RESEARCH & POLICY CENTER

ENVIRONMENT WASHINGTON

ENVIRONMENT WASHINGTON RESEARCH & POLICY CENTER

EVANGELICAL ENVIRONMENTAL NETWORK

EXTINCTION REBELLION, NEW ORLEANS

FAIRBANKS CLIMATE ACTION COALITION

FAITH IN PLACE

FAYETTEVILLE POLICE ACCOUNTABILITY COMMUNITY TASKFORCE

FIRST WEDNESDAYS SAN LEANDRO

FLORIDA PIRG

FLORIDA PIRG EDUCATION FUND

FLORIDA RISING

FOOD STRONG

FRACTRACKER ALLIANCE

GEORGE MASON UNIVERSITY CENTER FOR CLIMATE CHANGE COMMUNICATION

GEORGIA CONSERVATION VOTERS

GEORGIA PIRG

GEORGIA PIRG EDUCATION FUND

GREAT LAKES RENEWABLE ENERGY ASSOCIATION (GLREA)

GREEN NEIGHBOR CHALLENGE

GREENVEST

ILLINOIS PIRG

ILLINOIS PIRG EDUCATION FUND

IOWA PIRG

IOWA PIRG EDUCATION FUND

KENTUCKY INTERFAITH POWER AND LIGHT

LAPLACA AND ASSOCIATES LLC

LEAGUE OF WOMEN VOTERS OF FLORIDA

LIVING RIVERS & COLORADO RIVERKEEPER

LOCAL CLEAN ENERGY ALLIANCE

LONGMEADOW PIPELINE AWARENESS GROUP

LOWER CAPE INDIVISIBLE

MAINE UNITARIAN UNIVERSALIST STATE ADVOCACY NETWORK

MARYLAND PIRG

MARYLAND PIRG FOUNDATION

MASSPIRG

MASSPIRG EDUCATION FUND

MEDIA ALLIANCE

MI AIR MI HEALTH

MICHIGAN ENVIRONMENTAL JUSTICE COALITION

MID-OHIO VALLEY CLIMATE ACTION

MONTPIRG

MOPIRG

MOPIRG FOUNDATION

NC WARN

NEW ENERGY ECONOMY

PENNENVIRONMENT

PENNENVIRONMENT RESEARCH & POLICY CENTER

PENNPIRG

PENNPIRG EDUCATION FUND

PIRGIM

PIRGIM EDUCATION FUND

POWERSWITCH ACTION

PUBLIC LANDS PROJECT

RÁBAGO ENERGY LLC

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (PEER)

RÉCOLTE ENERGY

RIPIRG

RIPIRG EDUCATION FUND

ROOTSACTION.ORG

SANTA BARBARA STANDING ROCK COALITION

SANTA CRUZ CLIMATE ACTION NETWORK

SENECA LAKE GUARDIAN

SIERRA CLUB

SIERRA CLUB, FALLS OF THE JAMES GROUP

SISTERS OF CHARITY

SISTERS OF ST. DOMINIC OF BLAUVELT, NEW YORK

SISTERS OF ST. FRANCIS OF PHILADELPHIA

SNAKE RIVER ALLIANCE

SOLAR SOURCE

SOLAR UNITED NEIGHBORS (CO)

SOLAR UNITED NEIGHBORS (IN)

SOLAR UNITED NEIGHBORS (VA)

SOUTH UMPQUA RURAL COMMUNITY PARTNERSHIP

SOWING JUSTICE

SUNNOVA

SUNRISE KNOXVILLE

SUNTILITY ELECTRIC LLC

SUSTAINABLE ROANOKE

SYRACUSE PEACE COUNCIL

TEXPIRG

TEXPIRG EDUCATION FUND

THE NORTH CARLINA ALLIANCE TO PROTECT OUR PEOPLE AND THE PLACES WE LIVE (NC-APPPL)

TUCSON CLIMATE ACTION NETWORK

TURTLE ISLAND RESTORATION NETWORK

U.S. PIRG

U.S. PIRG EDUCATION FUND

UNION OF CONCERNED SCIENTISTS

UNITARIAN UNIVERSALIST ASSOCIATION

UNITARIAN UNIVERSALISTS FOR A JUST ECONOMIC COMMUNITY

UNITE NORTH METRO DENVER

UNITED FOR ACTION

UTAH PHYSICIANS FOR A HEALTHY ENVIRNOMENT

VIRGINIA YOUTH CLIMATE COOPERATIVE

VOTE CLIMATE

VOTE SOLAR

WASATCH CLEAN AIR COALITION

WASHPIRG

WASHPIRG FOUNDATION

WE WANT GREEN TOO

WESPAC FOUNDATION, INC.

WHOLE SUN DESIGNS INC.