



## **PETITION TO THE TENNESSEE VALLEY AUTHORITY CONCERNING MISUSE OF RATEPAYER FUNDS**

Submitted by:

Center for Biological Diversity  
Appalachian Voices  
Energy Alabama  
Gasp  
Solar United Neighbors

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February 20, 2020

***Via email and registered mail***

James “Skip” Thompson, Chairman of the Board  
Jeff Lyash, President and CEO  
Sherry A. Quirk, Executive Vice President and General Counsel  
Tennessee Valley Authority  
400 W. Summit Hill Dr.  
Knoxville, TN 37902

Re: Petition For Rulemaking Concerning the Tennessee Valley Authority’s  
Use Of Ratepayer Funds

We are writing on behalf of the Center for Biological Diversity, Appalachian Voices, Energy Alabama, Gasp, and Solar United Neighbors (hereafter Petitioners), and their thousands of members in TVA’s territory, to address the Tennessee Valley Authority’s (TVA) use of ratepayer funds to financially support third-party organizations, including those actively engaged in controversial political advocacy contrary to TVA’s environmental protection mandate, as well as many other organizations that simply have no connection with TVA’s overall mission. As reflected in the attached spreadsheets provided pursuant to the Freedom of Information Act, the agency annually spends *millions of dollars* on membership dues, fees, and other donations to well over *1,000* separate third-party organizations engaged in a broad range of activities. *See Attachment 1.*

As discussed in detail below, the regular beneficiaries of TVA’s largesse include organizations such as:

- Edison Electric Institute;
- The Utility Regulatory Groups – Utility Air Regulatory Group, Utility Water Act Group, and Utility Solid Waste Activities Group;
- Energy and Wildlife Action Coalition;
- American Public Power Association; and
- Nuclear Energy Institute.

These organizations, in turn, routinely make political donations, engage in legislative lobbying, pursue controversial litigation, and pursue other forms of political advocacy that promote fossil fuel interests, stifle renewable energy development, and negatively impact the environmental health of the Tennessee Valley’s residents. Accordingly, these organizations should not be financially supported by a federal agency under any circumstances, and especially by TVA, given the agency’s statutory obligation to be an environmental steward.

Moreover, many of TVA’s ratepayers do not agree with the political activities of these groups—including the promotion of fossil fuel interests and quashing of clean energy development—to which their ratepayer money is funneled by TVA. Forcing ratepayers to subsidize these controversial activities, and thus to pay for speech directly contrary to their interests and personal beliefs, violates ratepayers’ First Amendment rights against compelled speech. While TVA has argued that it does not pay outside organizations for their political activities, as we will explain, the Supreme Court recently ruled that, to comply with the First Amendment, individuals cannot be forced to subsidize organizations that engage in objectionable speech, even if the organization claims to segregate its funds into political and non-political accounts. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

TVA also donates millions of dollars to non-profit charitable organizations, including dozens of local Chambers of Commerce; various universities and other schools; many foundations; boys and girls clubs; and myriad other groups. As recently reported in *The New York Times*, and as has been further detailed elsewhere, purchasing customer loyalty in this manner, and at the very least goodwill, is a well-documented tactic of corporate utilities to maintain customer acquiescence.<sup>1</sup> For TVA, these financial contributions serve to insure TVA customers do not speak up about the urgent need to protect the Tennessee Valley from toxic air pollution and the worst impacts of the climate crisis.

As a federal agency, TVA should not be in the business of choosing which outside organizations will be the beneficiary of funds TVA receives from its ratepayers. This practice raises enormous conflict of interest and self-dealing issues, and implicates TVA’s compliance with a host of federal requirements. *See, e.g.*, 5 C.F.R. Part 2635.

Accordingly, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq.*, Petitioners respectfully request that TVA conform its practices to comply with its statutory mandates and ratepayers’ First Amendment rights by issuing new regulations or policies that end these practices, including both TVA’s funding for groups engaged in political advocacy activities and for charitable donations. Proposed regulations to accomplish this goal, pursuant to 5 U.S.C. § 552, are attached. *See* Attachment 2.

Please let us know within thirty days whether TVA is prepared to take appropriate action to address these issues, and if so when they will be accomplished.

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<sup>1</sup> *See* Ivan Penn, *N.A.A.C.P. Tells Local Chapters: Don’t Let Energy Industry Manipulate You*, *New York Times*, Jan. 5, 2019 (available at <https://www.nytimes.com/2020/01/05/business/energy-environment/naacp-utility-donations.html>); *see also* Anderson, et al., *Strings Attached: How Utilities Use Charitable Giving To Influence Politics and Increase Investor Profits (“Strings Attached”)* (Energy and Policy Institute, Dec. 2019), available at <https://www.energyandpolicy.org/wp-content/uploads/2019/12/Strings-Attached-how-utilities-use-charitable-giving-to-influence-politics-and-increase-investor-profits.pdf>

## **BACKGROUND**

### **A. Controversial Political Advocacy Organizations Supported By TVA**

TVA is a member of – and therefore regularly pays dues and other fees to – a long list of organizations with well-documented histories of direct political activities and controversial political advocacy, including those we discuss next.<sup>2</sup>

#### **1. The Edison Electric Institute**

The Edison Electric Institute (EEI) is the leading trade association for investor-owned utilities and other entities.<sup>3</sup> With a budget of more than \$90 million,<sup>4</sup> most of which is derived from membership dues, EEI wields tremendous power in influencing regulatory and policy decisions at federal, state, and international levels.

EEI has long been engaged in controversial political advocacy regarding activities that adversely impact the public. For example, in recent years EEI itself has emphasized its own efforts toward:

- Advocating that EPA permit the maximum levels of ozone in the environment, rather than a more environmentally-protective ozone standard;<sup>5</sup>
- Challenging EPA actions designed to protect human health and the environment, including working with the Utility Regulatory Groups on their advocacy efforts;<sup>6</sup>
- “[A]chiev[ing] the industry’s goals of preserving existing regulation of” toxic chemicals in amending the Toxic Substances Control Act.<sup>7</sup>

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<sup>2</sup> See TVA Membership List (Attachment 3) (also available at <https://www.tva.gov/Information/TVA-Membership-List>).

<sup>3</sup> See “About EEI,” available at <https://www.eei.org/about/Pages/default.aspx>; see also “EEI Members List” (Attachment 4), also available at [http://www.eei.org/about/members/uselectriccompanies/Documents/memberlist\\_print.pdf](http://www.eei.org/about/members/uselectriccompanies/Documents/memberlist_print.pdf) (listing TVA as a “Strategic Partner”).

<sup>4</sup> See EEI Form 990, 2018, available at <https://www.documentcloud.org/documents/6553997-Edison-Electric-Institute-2018.html>; EEI Form 990, 2017, available at <https://www.documentcloud.org/documents/5218920-EEI-2017-Form-990.html>; EEI Form 990, 2016, available at <https://projects.propublica.org/nonprofits/organizations/130659550>; EEI Form 990, 2015 available at <http://www.documentcloud.org/documents/3221593-Edison-Electric-Institute-EEI-2015-990.html>.

<sup>5</sup> See EEI “2015 Results in Review” (Attachment 5), also available at <http://big.assets.huffingtonpost.com/eeibooklet.pdf>.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> EEI Results in Review 2016 (Attachment 6).

- Delaying implementation of the Clean Power Plan, which was designed to protect human health and the environment from air and climate pollution, and succeeding in implementing “less stringent” requirements for coal plants;<sup>8</sup>

EEI leadership has also publicly denied human-caused climate change,<sup>9</sup> and EEI has funded a nationwide campaign to sow public doubt about climate science.<sup>10</sup> Moreover, EEI “partnered with the American Gas Association and the Nuclear Energy Institute . . . to drive the conversation about our nation’s energy future” at the 2016 Republican and Democratic National Conventions.<sup>11</sup>

EEI also provides direct funding to purely political activities, such as funding the Republican and Democratic Governors and Attorney Generals’ Associations and contributions to state and local offices, as well as other political organizations.<sup>12</sup>

Finally, EEI has also been centrally involved in coordinating and funding a multi-year campaign to fight solar net metering – a critically important policy supporting distributed solar generation (DG), whereby a utility pays the generator for its excess generation during daylight hours – and similar policies to slow the growth of distributed solar power.<sup>13</sup> It has also lobbied extensively against other renewable energy initiatives.<sup>14</sup>

<sup>8</sup> See EEI “2015 Results in Review” (Attachment 5), also available at <http://big.assets.huffingtonpost.com/eeibooklet.pdf>.

<sup>9</sup> In 2017, EEI Chairman Tom Fanning, in response to CNBC anchor’s question whether it had been proven that carbon dioxide was the main driver of climate change replied, ““No, certainly not. Is climate change happening? Certainly. It has been happening for millennia.” See <https://archive.is/E8CMO>

<sup>10</sup> In 1989, EEI joined the Global Climate Coalition, which for years worked to downplay and deny human-caused climate change. See Mulvey, K. & Shulman, S, *The Climate Deception Dossiers: Internal Fossil Fuel Industry Memos Reveal Decades of Corporate Disinformation*, Union of Concerned Scientists, 11, (2015), available at <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

<sup>11</sup> EEI Results in Review 2016 (Attachment 6) at p. 7.

<sup>12</sup> See EEI Form 2018, at 17-20 ; EEI 2017 Form 990, at 17.

<sup>13</sup> Joby Warrick. *Utilities wage campaign against rooftop solar*. March 7, 2015. The Washington Post; see also <https://www.energyandpolicy.org/edison-electric-institute-campaign-against-distributed-solar/>; see also EEI Results in Review 2016 at 1 (discussing efforts to “reform net energy meeting” and promote “the need for rate reform”); see also Climate Investigations Center, EEI (detailing EEI’s support for anti-renewables legislation) (available at <https://climateinvestigations.org/trade-association-pr-spending/edison-electric-institute/>).

<sup>14</sup> John M. Broder, *Industry Flexes Muscle, Weaker Energy Bill Passes*, New York Times, Dec. 14, 2007 (explaining how EEI “carried out an extensive lobbying campaign warning that” a renewable energy mandate “would cause sharp increases in electric rates”), available at [https://www.nytimes.com/2007/12/14/washington/14energy.html?\\_r=1&hp&oref=slogin](https://www.nytimes.com/2007/12/14/washington/14energy.html?_r=1&hp&oref=slogin). Indeed, a few years ago the National Association of Regulated Utility Commissioners (NARUC) – the national association representing the State Public Service Commissioners – undertook a review of net metering policies. EEI did not submit technical input to this proceeding, but rather expressed its long-held political viewpoint opposing distributed solar, including highly controversial and factually-discredited arguments about how net metering unfairly subsidizes solar generators at the expense of other consumers; in favor of putting solar customers in a separate rate class to make it easier for utilities to charge them more and further discourage DG adoption; and even arguing for replacing net metering with a system that compensates DG customers at lower, wholesale rates. See Comments of EEI on NARUC Draft Manual

While these many examples all demonstrate beyond dispute that EEI is engaged in controversial political advocacy, that conclusion is further confirmed by other evidence. First, when the National Association of Regulated Utility Commissioners (NARUC) last audited EEI activities, EEI was found to be spending 50% of its money on advocacy and lobbying efforts.<sup>15</sup> In addition, utility commissions *themselves* have often recognized that EEI spends considerable funds on political advocacy, and on that basis have reduced the amount of EEI dues that may be charged to ratepayers.<sup>16</sup>

Finally, in addition to its own political advocacy work, EEI funds other groups engaged in expressly political activities. This includes groups like the Utility Regulatory Groups, for which *EEI directly invoices TVA millions of dollars in charges*,<sup>17</sup> and which - as we discuss next - also engage in highly political advocacy directly contrary to the interests of TVA ratepayers.

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on Distributed Energy Resources (Sept. 2016) at 3-4, 22-26, available at <https://pubs.naruc.org/pub.cfm?id=40CDB40D-E2B5-4DD2-7793-2174F9234D02>.

Fortunately, NARUC rejected many of EEI's unsubstantiated arguments in its final report, which only further demonstrates their political, rather than fact-driven, nature. *See* Distributed Energy Resources Rate Design and Compensation, NARUC (Nov. 2016), available at <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>. Nonetheless, EEI has highlighted its “work[ ] to rebalance the public conversation” on these issues opposing distributed energy, including promoting its controversial perspective on “the economic and environmental benefits of universal solar compared to private solar systems” and seeking reduction in the rates paid for distributed solar. *See* EEI Results in Review 2016 (Attachment 6) at p. 4.

<sup>15</sup> *See* Anderson, et al., *Paying for Utility Politics: How utility ratepayers are forced to fund the Edison Electric Institute and other political organizations*, Energy and Policy Institute, (2017) at 10 (available at <https://www.energyandpolicy.org/wp-content/uploads/2017/05/Paying-for-utility-politics-ratepayers-funding-the-Edison-Electric-Institute.pdf>) (explaining that “[o]ne of the final audits from NARUC revealed that 50% of EEI’s expenditures went to” political activities).

<sup>16</sup> *See, e.g.*, Northern Indiana Public Service Company, Edison Electric Institute Dues, (MSFR1-5-8(a)(2)(A)), available at <https://www.documentcloud.org/documents/3111262-Northern-Indiana-Public-Service-Company-Invoices.html#document/p204/a318825>; Duke Energy Carolinas, Edison Electric Institute Dues, 3-4, available at <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=27d39a6b-5972-4687-b424-3978f8bfb8c0>; Dominion Energy, Edison Electric Institute Dues, 552, available at <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=84a3f74c-c276-4b61-ba90-63f6cd70f257>. Even in its own filings, EEI states that it engages in lobbying activities. *See* EEI 2017 Form 990, available at <https://www.documentcloud.org/documents/5218920-EEI-2017-Form-990.html> (listing over \$1 million on lobbying).

<sup>17</sup> *See* EEI invoices to TVA showing payments to UARG (Attachment 7). The Utility Regulatory Groups are run by Hunton & Williams law firm, to which, in 2018 alone, EEI paid more than \$7 million dollars – further demonstrating the incredibly close ties between EEI and the Utility Regulatory Groups highly controversial advocacy efforts. *See* 2017 EEI Form 990 at 8, available at <https://www.documentcloud.org/documents/5218920-EEI-2017-Form-990.html>.

## 2. The Utility Regulatory Groups

The Utility Regulatory Groups – Utility Air Regulatory Group (UARG), Utility Water Act Group (UWAG), and Utility Solid Waste Activities Group (USWAG) – are well-recognized anti-regulatory advocacy groups funded by utilities and other corporate interests, and overseen by several prominent law firms.<sup>18</sup>

The list of these groups' controversial political advocacy is long. For example:

- UARG has participated in more than 200 regulatory matters objecting to and often litigating over clean air and public health standards, among other matters<sup>19</sup>, and UWAG and USWAG have similarly objected to numerous regulations designed to protect human health and the environment,<sup>20</sup>
- Among the critically important air and climate initiatives the Utility Regulatory Groups have sought to delay and prevent include:
  - the federal government's efforts to regulate greenhouse gas emissions under the Clean Air Act;<sup>21</sup>
  - EPA's regulation of greenhouse gas emissions from stationary sources;<sup>22</sup>
  - EPA's regulation of greenhouse gas emissions from power plants through the Clean Power Plan;<sup>23</sup>

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<sup>18</sup> See generally Anderson, et al., *Paying for Utility Politics: How utility ratepayers are forced to fund the Edison Electric Institute and other political organizations*, Energy and Policy Institute, (2017) at 15 (available at <https://www.energyandpolicy.org/wp-content/uploads/2017/05/Paying-for-utility-politics-ratepayers-funding-the-Edison-Electric-Institute.pdf>); see also Coleman, Z. and Guillen, A, *Documents detail multimillion-dollar ties involving EPA official, secretive industry group*, Politico (2019) available at <https://www.politico.com/story/2019/02/20/epa-air-pollution-regulations-wehrum-1191258>.; see also <https://www.energyandpolicy.org/utility-air-regulatory-group/> (summarizing UARG's work).

<sup>19</sup> See Sean Reilly, *TVA defends its role in trade group*, E&E News May 7, 2019 ("UARG, which mainly represents utilities reliant on coal-fired generation, has been a party in some 200 lawsuits since 2001, according to federal court records, including challenges to such landmark regulations as EPA's limits on power plant emissions of mercury and other toxins"), available at <https://www.eenews.net/stories/1060291357>.

<sup>20</sup> See Kasper, M, *UWAG and USWAG the secretive utility groups that also target EPA safeguards remain after Utility Air Regulatory Group disbands*, Energy and Policy Institute, (2019), available at <https://www.energyandpolicy.org/uwag-and-uswag-the-secretive-utility-groups-that-target-epa-rules/>; see also UARG Policy Workshop Materials (Attachment 8) at 16-25 (providing a long list of recent political advocacy projects and lawsuits of UARG).

<sup>21</sup> See, e.g., Comments of Utility Air Regulatory Group on Proposed Endangerment Finding (Hunton & Williams, June, 2009), available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0171-3394>.

<sup>22</sup> See *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

<sup>23</sup> See Brief of Petitioners, *West Virginia v. EPA*, No. 15-1363 (Feb. 19, 2016); see also UARG Comments on EPA Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program; Proposed Rule, 83 Fed. Reg. 44, 746 (Aug. 31, 2019), Docket ID No. EPA-HQ-OAR-2017-0355, available at <https://assets.documentcloud.org/documents/5027539/Final-UARGcommentsOnACERule103118-C.pdf>.



- EPA's rule to limit toxic wastewater discharge into waterways from power plants;<sup>24</sup>
- EPA's regulation – promulgated in response to a toxic TVA spill in 2010 – establishing requirements for safe disposal of coal ash from power plants.<sup>25</sup>

Finally, it is highly telling that none of the Utility Regulatory Groups have ever taken the position that EPA regulations needed to be *strengthened*. Rather, consistent with these groups' political position to protect fossil fuel interests and their existing fossil fuel power infrastructure, these groups consistently argue *against* additional protections designed to protect the public, including the residents of the Tennessee Valley.

### 3. The Energy and Wildlife Action Coalition

The Energy and Wildlife Action Coalition (EWAC) is another industry-funded and controversial advocacy group promoting utility positions intended to undermine federal wildlife protection efforts.

Some of EWAC's controversial political advocacy efforts include:

- Seeking to undermine and weaken protections for migratory birds;<sup>26</sup>
- Seeking to weaken critical habitat protections for species under the Endangered Species Act (ESA);<sup>27</sup>
- Litigation challenging wildlife protections afforded under the Bald and Golden Eagle Protection Act;<sup>28</sup>

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<sup>24</sup> See Utility Water Act Group's Petition for Reconsideration of EPA's final rule titled "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," 80 Fed. Reg. 67,838 (Nov. 3, 2015), available at [https://www.epa.gov/sites/production/files/2017-03/documents/letter\\_to\\_epa\\_submitting\\_petition\\_for\\_reconsideration\\_w\\_exhibits-c\\_508.pdf](https://www.epa.gov/sites/production/files/2017-03/documents/letter_to_epa_submitting_petition_for_reconsideration_w_exhibits-c_508.pdf)

<sup>25</sup> See Utility Solid Waste Activities Group Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21,302 (April 17, 2015), available at [https://www.epa.gov/sites/production/files/2017-06/documents/final\\_uswag\\_petition\\_for\\_reconsideration\\_5.12.2017.pdf](https://www.epa.gov/sites/production/files/2017-06/documents/final_uswag_petition_for_reconsideration_5.12.2017.pdf)

<sup>26</sup> See Comments regarding the May 26, 2015 Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate the Potential Environmental Impacts of a Proposal to Authorize Incidental Take of Migratory Birds (July 27, 2015), available at [file:///C:/Users/HCrystal/Downloads/2015-07-27\\_EWAC\\_comments\\_re\\_MBTA\\_NOI.pdf](file:///C:/Users/HCrystal/Downloads/2015-07-27_EWAC_comments_re_MBTA_NOI.pdf).

<sup>27</sup> See Comments regarding the May 12, 2014 notices of proposed rules and policy on critical habitat under the U.S. Endangered Species Act (Oct. 9, 2014), available at [http://energyandwildlife.com/public\\_docs/Endangered%20Species/2014-10-09%20EWAC%20comments%20re%20adverse%20mod%20w-conf.pdf](http://energyandwildlife.com/public_docs/Endangered%20Species/2014-10-09%20EWAC%20comments%20re%20adverse%20mod%20w-conf.pdf).

<sup>28</sup> See *Energy and Wildlife Action Coalition v. Interior*, No. 15-1486 (D.D.C. Sept. 10, 2015); see also Settlement Agreement of Sept. 16, 2019 in No. 15-1486 (resolving the suit).

- A Supreme Court Amicus brief supporting the denial of ESA protection for an imperiled species;<sup>29</sup>
- Comments supporting the Trump Administration's recent efforts to substantially weaken protections species are afforded under the ESA.<sup>30</sup>

#### 4. American Public Power Association

The American Public Power Association (APPA) is an industry association group that advocates on behalf of public power utilities. It reported \$741,561 in lobbying in 2018, and \$780,077 in 2017.<sup>31</sup> APPA also donates to political PACs, with 34% going to Democrats and 66% to Republicans in 2018.<sup>32</sup>

APPA's controversial political positions and political activities include:

- Opposing efforts to establish a federal renewable electricity standard;<sup>33</sup>
- Opposing federal efforts to improve rate design coordination and grid integration of Distributed Energy Resources (DER);<sup>34</sup>

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<sup>29</sup> See *Weyerhaeuser Co. v. FWS*, No. 17-71, Brief of Energy and Wildlife Action Coalition in Support of Petitioner (Apr. 30, 2018).

<sup>30</sup> See Comments regarding the Revision of Regulations for Prohibitions to Threatened Wildlife and Plants (Sept. 24, 2018), available at <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/documents/2018-09-24%20final%20ewac%20public%20comments%20re%20revision%20of%20esa%20regs%20for%20prohibitions%20to%20threatened%20wildlife%20and%20plants.pdf>

<sup>31</sup> See Center for Responsive Politics, *Annual Lobbying by American Public Power Assn (2017)*, <https://www.opensecrets.org/lobby/clientsum.php?id=D000023996&year=2017>; see also Center for Responsive Politics, *Annual Lobbying by American Public Power Assn (2018)*, <https://www.opensecrets.org/lobby/clientsum.php?id=D000023996&year=2018>; see also U.S. Senate Office of Public Records, *American Public Power Search Results (2017-2018)*, Query the Lobbying Disclosure Act Database, <https://soprweb.senate.gov/index.cfm?event=processSelectFields>.

<sup>32</sup> See Center for Responsive Politics, *Contributions to Federal Candidates, 2018 cycle, American Public Power Assn*, <https://www.opensecrets.org/pacs/pacgot.php?cmte=C00161570&cycle=2018>; see also U.S. Federal Election Commission, *American Public Power Association, Public Ownership of Electric Resources PAC (C00161570), 2017-2018 Disbursements*, Campaign Finance Data, [https://www.fec.gov/data/disbursements/?committee\\_id=C00161570&two\\_year\\_transaction\\_period=2018&data\\_type=processed](https://www.fec.gov/data/disbursements/?committee_id=C00161570&two_year_transaction_period=2018&data_type=processed).

<sup>33</sup> See Testimony of Susan N. Kelly, President and CEO of APPA, before the Senate Committee on Energy and Natural Resources, Hearing on Energy Supply Legislation at 7 (2015), available at [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=DA7A11A4-9DF2-4ABC-B01A-EA4FCF58471F](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=DA7A11A4-9DF2-4ABC-B01A-EA4FCF58471F).

<sup>34</sup> See APPA, *Issue Brief: Distributed Energy Resources*, 2 (2019), available at <https://www.publicpower.org/system/files/documents/23%20Distributed%20Energy%20Resources.pdf>

- Promoting outdated and inaccurate views on DER costs, with inaccurate public statements on cost-shifting;<sup>35</sup>
- Urging repeal of the Clean Power Plan and supporting a weakened replacement rule;<sup>36</sup>
- Opposing the regulation of carbon dioxide and greenhouse gas emissions from existing facilities using the Clean Air Act;<sup>37</sup>
- Opposing the Waters of the United States (WOTUS) rule in 2015, advocating that it be withdrawn and re-proposed with narrower parameters.<sup>38</sup>

Finally, like the other groups discussed above, APPA does not take the stance that EPA’s regulations should be strengthened to protect the public and ecosystems of the Tennessee Valley, but rather consistently makes the political argument that regulation is too costly and that clean energy – particularly distributed generation – should not be encouraged.

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<sup>35</sup> See American Public Power Association, *Leadership in Rate Design*, 9 (2019), available at <https://www.publicpower.org/system/files/documents/Leadership-in-Rate-Design.pdf>. (where APPA claims net metering “takes advantage of the disconnect between how fixed and variable costs are incurred and how they are passed through to customers, causing potentially severe cost shifting among customer classes, often in a socially regressive way,” despite expansive research demonstrating the contrary).

<sup>36</sup> See Ciampoli, P. Association urges repeal, replacement of Clean Power Plan, American Public Power Association (2018), available at <https://www.publicpower.org/periodical/article/association-urges-repeal-replacement-clean-power-plan>; see also APPA Comments on EPA’s Proposed rule: Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing regulations; Revisions to New Source Review Program, Commonly called the Affordable Clean Energy Rule or ACE Rule, 5 (2018), available at <https://www.publicpower.org/system/files/documents/Final%20APPA%20Comments%20on%20the%20Proposed%20ACE%20Rule.pdf>.

<sup>37</sup> See American Public Power Association, *Comments of the American Public Power Association On the U.S. Environmental Protection Agency’s Advance Notice of Proposed Rulemaking on Greenhouse Gas Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 Fed. Reg. 61,507 (Dec. 28, 2017) Docket Id. No. EPA-HQ-OAR-2017-0545, <https://www.publicpower.org/system/files/documents/Final%20APPA%20Comments%20on%20the%20Proposed%20ACE%20Rule.pdf>

<sup>38</sup> See American Public Power Association, *Environment Issue Brief: Waters of the United States*, 3 (2017) available at [https://www.publicpower.org/system/files/documents/waters\\_of\\_the\\_united\\_states\\_0.pdf](https://www.publicpower.org/system/files/documents/waters_of_the_united_states_0.pdf)

## 5. The Nuclear Energy Institute

The Nuclear Energy Institute (NEI) is yet another industry association group with a long history of controversial political activity. It reported approximately \$2 million on lobbying in both 2018 and 2017.<sup>39</sup> NEI also donates to political PACs, with 35% going to Democrats and 65% to Republicans in 2018.<sup>40</sup>

NEI not only advocates for nuclear power, which the Supreme Court itself has characterized as a “controversial issue[,]” *Consolidated Edison Co. v. PSC*, 447 U.S. 530, 543 (1980), and for ratepayers to subsidize nuclear power,<sup>41</sup> but its controversial policy priorities also include both preserving existing nuclear plants<sup>42</sup> and building small modular reactors<sup>43</sup> – a technology which is not in production, and, thus, for which it is controversial to consider dedicating resources that could be earmarked to build out existing and true clean energy sources, such as wind and solar.

As a recent example, in 2019 NEI supported highly controversial Ohio House Bill 6, which subsidized two nuclear plants and two coal plants, while drastically weakening renewable and energy efficiency policy in the state, thus slowing the state’s transition to a clean and renewable energy portfolio.<sup>44</sup>

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<sup>39</sup> See Center for Responsive Politics, *Annual Lobbying by Nuclear Energy Institute (2017)*, <https://www.opensecrets.org/lobby/clientsum.php?id=D000000555&year=2017>; see also Center for Responsive Politics, *Annual Lobbying by Nuclear Energy Institute (2018)*, <https://www.opensecrets.org/lobby/clientsum.php?id=D000000555&year=2018>; see also U.S. Senate Office of Public Records, *Nuclear Energy Institute Search Results (2017-2018)*, Query the Lobbying Disclosure Act Database, <https://soprweb.senate.gov/index.cfm?event=processSearchCriteria>.

<sup>40</sup> See Center for Responsive Politics, *Contributions to Federal Candidates, 2018 cycle, Nuclear Energy Institute*, <https://www.opensecrets.org/orgs/summary.php?id=D000000555&cycle=2018>; see also U.S. Federal Election Commission, *Nuclear Energy Institute Federal Political Action Committee (C00239848), 2017-2018 Disbursements*, Campaign Finance Data, [https://www.fec.gov/data/disbursements/?committee\\_id=C00239848&two\\_year\\_transaction\\_period=2018&data\\_type=processed](https://www.fec.gov/data/disbursements/?committee_id=C00239848&two_year_transaction_period=2018&data_type=processed).

<sup>41</sup> See Nuclear Energy Institute, “Incentives for Energy Production,” available at <https://www.nei.org/Issues-Policy/Economics/Incentives-for-Energy-Production>

<sup>42</sup> See Nuclear Energy Institute, “Preserve Nuclear Plants” available at <https://www.nei.org/advocacy/preserve-nuclear-plants>

<sup>43</sup> See “With New Reactors, a Better World Awaits,” NEI website, available at <https://www.nei.org/advocacy/build-new-reactors>.

<sup>44</sup> See Nuclear Energy Institute, “Ohio Introduces Bill to Value Zero-Carbon Energy Sources,” available at <https://www.nei.org/news/2019/ohio-introduces-bill-value-zero-carbon-energy>

## B. TVA's Financial Support for Controversial Political Advocacy Groups

As detailed in TVA's response to requests under the Freedom of Information Act, TVA funds each of the above-described groups engaged in controversial political activities and advocacy. For example:

- TVA pays EEI alone dues of \$500,000 each year to be a "Strategic Partner";<sup>45</sup>
- TVA has paid UWAG hundreds of thousands of dollars in fees in recent years;<sup>46</sup>
- TVA pays annual membership dues to NEI, in amounts the agency refuses to disclose;<sup>47</sup>
- TVA has paid UARG more than \$7 million,<sup>48</sup> and, through EEI, paid more than \$450,000 in 2017 alone;<sup>49</sup>
- TVA has paid more than \$200,000 in recent years for services by EWAC, which are also billed through EEI,<sup>50</sup> and
- TVA pays more than \$100,000 each year to be a member of USWAG, dues which are also passed through EEI.<sup>51</sup>

Moreover, although, as we will discuss below TVA should not be using ratepayer funds to support even these groups' *non*-political work, it is evident that TVA in fact pays these groups to engage in highly controversial political advocacy and litigation. For example, last year TVA informed Congress that the millions it paid to UARG have been used in that entity's work on "the development and implementation of regulations under the Clean Air Act,"<sup>52</sup> which, as explained

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<sup>45</sup> See EEI Bills to TVA (Attachment 9).

<sup>46</sup> See UWAG Bills to TVA (Attachment 10).

<sup>47</sup> See NEI Bills to TVA (Attachment 11). These invoices specifically note that a portion of TVA's dues are going to "lobbying expenses," but, in response to a Freedom of Information Act request, TVA redacted both the total dues amounts, and lobbying expense amounts, on the grounds that they could somehow qualify as confidential business information. Thus, not only is TVA using ratepayer funds to support NEI, it will not even disclose to the public the levels of that support.

<sup>48</sup> See TVA letter of Apr. 25, 2019 (Attachment 12).

<sup>49</sup> See UARG Policy Workshop Materials at 6 (Attachment 8). Moreover, as noted above, TVA has provided this hundreds of thousands of dollars of funding to UARG by passing the funds first through EEI. See Attachment 7.

<sup>50</sup> EWAC Membership Dues Invoices (Attachment 13). Some of these invoices expressly state that dues is being paid for "influencing legislation." *E.g. id.* at 3 (2017 Invoice).

<sup>51</sup> USWAG Membership Dues Invoices (Attachment 14). Like EWAC, these invoices state that dues is being paid for "influencing legislation." *Id.*

<sup>52</sup> See TVA letter of Apr. 25, 2019 at 2 (Attachment 12).

above, concern seeking to *undermine* regulations designed to protect human health and the environment.<sup>53</sup>

### **C. TVA’s Contributions To Other Outside Organizations**

As noted above, in addition to the millions of dollars TVA spends on dues and fees to organizations engaged in controversial political advocacy, in recent years TVA has also provided millions of dollars in selective donations to over one thousand charitable organizations throughout the Tennessee Valley. *See* Attachment 1, Part 2. These include everything from chambers of commerce, to educational institutions, to local associations, to various cities. It does not appear that any of these recipients received these funds to assist TVA with the services the agency provides pursuant to its statutory mission.

Utilities like TVA generally report their income and expenses in accordance with the Federal Energy Regulatory Commission’s Uniform System of Accounts. 18 C.F.R. Part 101.<sup>54</sup> For regulated utilities, the “donations” reported – under Account 426.1 – are an income deduction that utilities do not seek to recover from ratepayers as a cost of service. Rather, such expenditures must come from the utilities’ profits.

As a federal agency, TVA does not generate profits. However, in response to a Freedom of Information Act Request, TVA reported these millions of dollars in donations under Account 426.1, which typically would not be charged to ratepayers.

## **DISCUSSION**

### **A. TVA May Not Provide Ratepayer Funds To Support Controversial Political Advocacy Organizations.**

Pursuant to TVA’s Board Practices, the agency is authorized to fund third-party organizations, including organizations like those discussed above that engage in highly controversial political activities.<sup>55</sup> The only specific qualifier to this broad authorization is that outside organizations must obtain “specific authorization” before they may lobby or litigate “on behalf of TVA.”<sup>56</sup> This language neither expressly prevents TVA from financially supporting the work of these organizations, as it has done for many years, nor circumscribes the kinds of controversial activities described above.

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<sup>53</sup> Although in May, 2019 Energy Alabama and other groups asked the TVA Inspector General to investigate TVA’s support for the URG groups, there has been no further action. *See* May 14, 2019 Request for TVA OIG Investigation Regarding UARG, USWAG, and UWAG (Attachment 15).

<sup>54</sup> *See also* 16 USCS § 831m (mandating that TVA maintain accounts in accordance with this system).

<sup>55</sup> *See* 2016 Board Practices (Attachment 16) at 13 (TVA “may generally participate in any external organization that it determines can assist TVA in the advancement of its statutory or corporate mission through the payment of dues, membership fees, or other participatory contributions.”).

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

However, as discussed below, TVA’s financial support to these organizations contravenes both TVA’s statutory authority and the First Amendment rights of TVA ratepayers.

### **1. TVA’s Funding For These Groups Contravenes TVA’s Environmental Stewardship Mandate.**

In the TVA Act, Congress directed the agency to use its electricity rate-making authority to provide reasonably priced power, and to do so in a manner that protects the “*environmental, social, [and] physical well-being of the people*” living, working, and recreating in the Tennessee Valley area. 16 U.S.C. § 831a(g)(1)(K)(ii) (emphasis added). Congress also has more recently instructed TVA to be a “national leader in technological innovation, low-cost power, and environmental stewardship.” *Id.* § 831a(b)(5). To comply with its mandates, therefore, it is absolutely vital that TVA show leadership in the clean energy transition the country so desperately needs.

TVA’s membership dues and fees paid to controversial political advocacy organizations runs directly contrary to these specific mandates. To list just a few examples:

- *Fighting toxic pollution regulations:* These groups object to, and seek to delay, EPA’s regulation of toxic pollutants generated from fossil fuel power plants, including those owned by TVA. This runs directly contrary to TVA’s mandate to protect the public health and safety of the people of the Tennessee Valley.
- *Advocating against greenhouse gas emission reduction initiatives.* The U.S. Government’s most recent Fourth National Climate Assessment Volume 1<sup>57</sup>, which details how greenhouse gas emissions are fueling climate change, and Volume 2<sup>58</sup>, which covers the devastating regional impacts climate change will cause throughout the U.S., including in the Tennessee Valley, demonstrate that TVA must make every available effort to reduce greenhouse gas emissions in furtherance of its mission to protect the Valley from environmental harm. It thus fundamentally contravenes TVA’s mission for the agency to support these groups as they fight against even modest steps to reduce U.S. emissions, such as the Clean Power Plan and other Clean Air Act greenhouse gas emission reduction initiatives, while the groups also seek to continue to sow doubt about climate science.
- *Thwarting clean energy development.* These groups’ work to thwart the build-out of clean energy projects, including distributed energy, also runs directly against the environmental interests of the millions of people TVA serves. Indeed, to fulfill its mandate to be a “national leader in technological innovation,” 16 U.S.C § 831a(b)(5), TVA must *support* these new technologies, which are key elements of the critical clean energy transition,

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<sup>57</sup> USGCRP [U.S. Global Change Research Program], Climate Science Special Report: Fourth National Climate Assessment, Volume I [Wuebbles, D.J. et al. (eds.)], U.S. Global Change Research Program, Washington, D.C. (2017), <https://science2017.globalchange.gov/>.

<sup>58</sup> USGCRP [U.S. Global Change Research Program], Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II (Reidmiller, D.R. et al. eds.), U.S. Global Change Research Program, Washington, DC, USA (2018), <https://nca2018.globalchange.gov/>.

rather than funding outside groups that work to preserve the existing, dangerous, and polluting electric generation system which no longer serves the public interest.

- *Supporting speculative nuclear projects.* Unproven technologies, like small modular reactors, make no economic given that true clean energy technologies, such as wind and solar, are available today to provide “least cost” power consistent with TVA’s mandates.

On this basis alone, TVA should stop providing funds to groups like those discussed above that work on these and related efforts that are directly contrary to TVA’s mission.

## **2. TVA’s Funding For These Groups Contravenes Ratepayers’ First Amendment Rights.**

Regardless of whether TVA’s financial support for these organizations is consistent with the agency’s statutory mandates, there is another reason TVA must terminate these payments: they violate the First Amendment under the U.S. Constitution. *See Consolidated Edison Co. v. Pub. Svc. Commn*, 447 U.S. 530 (1980); *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). Thus, as we next explain, in order to safeguard the First Amendment rights of TVA ratepayers, TVA may neither directly fund political activities, nor provide any funding to outside groups that engage in these activities.

### **a. The First Amendment Proscribes TVA From Engaging in Or Directly Supporting Political Advocacy.**

The U.S. Supreme Court has long recognized that charging ratepayers for a utility’s political activities would raise serious First Amendment concerns. *See, e.g. Consolidated Edison Co.*, 447 U.S. 530. In addressing this issue, the Court in *Consolidated Edison* referred to the Court’s earlier ruling in *Abood v. Detroit Board of Educ.*, 431 U.S. 209 (1977), which concerned the First Amendment objections of employees required by state law to pay union dues, regardless of union membership or agreement with the union’s political activities. *See* 447 U.S. at 543 n.13. Understanding *Abood*, and its recent abrogation in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), is therefore critical to understanding why TVA may not provide *any* financial support to the groups discussed above, or other groups that engage in political advocacy.

In *Abood*, the Supreme Court emphasized that the “government may not require an individual to relinquish rights guaranteed [that individual] by the First Amendment,” and on that basis concluded that employees may not be forced to pay fees used by unions “to express political views unrelated to its duties as exclusive bargaining representative.” *Id.* To resolve that concern, the Court concluded that unions could only charge objecting members a lower amount – called an “agency fee” – to pay for the union’s work on behalf of the employees unrelated to the union’s political activities. *Id.*

For similar reasons, many state courts and agencies have long adopted the same approach to utility rate-making, prohibiting utilities from relying on ratepayer funds to pay for political activities. For example, in *Cahill v. NY Public Svc. Commn*, the highest court in New York upheld the New York Utilities Commission’s regulation prohibiting utilities from rate-basing funds provided to



“politically and religiously active organizations . . . engaged in activities and causes contrary to [ratepayers’] political or personal beliefs.” 556 N.E.2d 133, 134-35 (N.Y. 1990). Relying heavily on *Abood*, the New York court found that utility ratepayers should no more be forced to subsidize political activities than the objecting union members in *Abood*. *Id.* at 136-37. Indeed, noting that “ratepayers are powerless against governmentally-regulated monopolies and have no place else to seek indispensable public utilities services (like electricity),” the court concluded that ratepayers “are *more seriously burdened and disadvantaged* than the contributing nonunion members in *Abood*.” *Id.* at 136 (emphasis added); *see also id.* at 138 (concluding that the First Amendment does not permit utilities to “exert monolithic or majoritarian power through a mini-taxing authorization certainly against the interests and beliefs of some ratepayers,” which would “convert the free marketplace of ideas to the consumer-subsidized preserve of corporate utility ideas”).<sup>59</sup>

Accordingly, it is evident that just as TVA itself may not engage in political activities, the agency may not directly financially support the political activities of other organizations.<sup>60</sup>

**b. The First Amendment Also Proscribes TVA From Providing Any Financial Support To Outside Organizations That Engage In Political Advocacy.**

As noted above, despite its claims otherwise, it appears that TVA is directly funding third party groups to engage in political advocacy.<sup>61</sup> However, the question whether organizations receiving TVA funds are properly limiting use of those funds to non-political activities is now irrelevant, because the *Abood* approach of segregating between permissible and impermissible charges is no longer sanctioned under the First Amendment. Rather, the Supreme Court’s more recent ruling in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) largely overruled *Abood*, and established a bright line rule under which TVA may no longer provide *any* funding to third-party groups that engage in political advocacy.

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<sup>59</sup> *See also Consolidated Edison Co.*, 447 U.S. at 550 (discussing how numerous states forbid public utilities from “include[ing] in the rate base the costs of political advertising and lobbying”); R. Paul Gee, *Who Pays for Charitable Contributions Made By Utility Companies?*, 12 Energy Law Journal 363 (1991); Richard P. Johnson, *Power to the People: The First Amendment and Utility Operating Expenses*, 69 Wash. U.L.Q. 945 (Fall 1991) (detailing other similar regulations in other states) (articles available at: [https://www.eba-net.org/assets/1/6/30\\_12EnergyLJ363\(1991\).pdf](https://www.eba-net.org/assets/1/6/30_12EnergyLJ363(1991).pdf), and [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1912&context=law\\_lawreview](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1912&context=law_lawreview)).

<sup>60</sup> TVA itself recognized this limitation when the agency responded to a Congressional request for an explanation as to the bases for funding groups like UARG. *See* TVA letter of Apr. 25, 2019 at 2 (Attachment 12). Rather than mentioning that organization’s political advocacy, TVA responded to Congress by focusing on what the agency claimed are “highly technical and complex” services UARG provides to help TVA “ensure that compliance is achieved with [EPA] finalized rules on sound legal and technical bases.” *Id.* TVA thus asserted that its financial support was limited to non-political activities – suggesting that UARG could simply segregate its activities and receive TVA support for those activities that are not tied to political advocacy. *See also* 18 C.F.R. 1315.100 (imposing some restrictions on TVA payments for “influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress”).

<sup>61</sup> *See supra* at 12 (noting TVA funds to UARG for work opposing Clean Air Act regulations).

*Janus*, like *Abood*, concerned a challenge to union dues requirements. Explaining that through compelled speech, “individuals are coerced into betraying their convictions,” and emphasizing that “[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning,” the Court explained that compelled speech is of even more concern than speech prohibitions, and that “[c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.” *Id.* at 2464 (emphasis in original).

The specific question at issue in *Janus* was whether it was sufficient that objecting employees pay only the “agency fee” that supports the *non*-political activities of the union (which was the rule under *Abood*), or whether, as petitioners asserted, even compelling payment *only* for purported non-political activities violated objecting employees’ First Amendment rights. Overruling *Abood*, the Supreme Court concluded that forcing employees to pay *any dues* over their objection violates their First Amendment rights. In particular, the Court found the *Abood* distinction between “chargeable and nonchargeable union expenditures” to be unmanageable. *Id.* at 2481-82. Thus, although, as the dissent pointed out, *id.* at 2498 (Kagan, J., dissenting), courts have had little difficulty deciding which union activities fall on which side of the line, the majority concluded that because objecting employees might *sometimes* be paying for activities that could be considered to be political, they cannot be required to *pay dues at all*. *Id.* at 2481-82; *see also Harris v. Quinn*, 134 S. Ct. 2618 (2014) (similarly ruling that a state may not compel any “agency fee” to support a union, where the employees are not full-fledged public employees).

TVA serves more than nine million customers in seven states, many of whom are deeply concerned about toxic air pollution, coal ash, greenhouse gas emissions and the climate crisis, and other dangers of TVA’s fossil fuel production. Many of these TVA ratepayers, including members of Petitioners’ organizations, object to TVA sending their ratepayer funds—which they have no choice about paying—to groups engaged in political advocacy on these and related issues that run directly contrary to their interests. Thus, they object to TVA giving money to groups like EEI, the Utility Regulatory Groups, APPA, EWAC, and NEI, some of which not only support political candidates, but, as discussed in detail above, all advocate against regulations designed to protect the environment, oppose efforts to reduce greenhouse gas emissions, and otherwise work to thwart, rather than advance, the nation’s vital transition to a clean energy economy.

In light of these objections, under *Janus*, the First Amendment *prohibits* TVA from providing *any* funding these groups. Other Supreme Court precedents also dictate this result. *See United States v. United Foods*, 533 U.S. 405, 410 (2001) (rejecting a government program that compelled mushroom producers to pay for advertising they do not support, finding that, “[j]ust as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views”).<sup>62</sup> Moreover, in *Janus*, the United States argued that since *everything* state employee unions do impacts how public resources are expended, all of their activities are inherently political.<sup>63</sup> Following that same reasoning in this

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<sup>62</sup> *See also, e.g., Ranchers-Cattlemen Action Legal Fund v. Perdue*, No. 16-41-GF, 2017 WL 2671072 (D. Mont. Jun. 21, 2017), *aff’d* 718 Fed. Appx. 541 (2018) (enjoining USDA “from continuing to allow the Montana Beef Council to use the assessments that it collects under the Beef Checkoff Program to fund its advertising campaigns, absent prior affirmative consent from the payer”).

<sup>63</sup> *See Amicus Brief of the United States in Janus v. AFSCME*, No. 16-1466 (U.S. Dec. 6, 2017), at 15-17.

context, since groups like EEI and other groups discussed above exist to advocate for how public resources are spent in the utility context, all of their activities implicate ratepayers' First Amendment rights.

The Supreme Court's discussion of the resource allocation in another case, *Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012), further highlights the apparent infeasibility of distinguishing between chargeable and non-chargeable expenses. In particular, the Court noted the problems inherent in assuming that the recipients of funds are using them in the manner they claim, as well as the inappropriate burden this assumption puts on objecting parties to establish that their compelled payments are not being used in a manner that infringes their First Amendment rights. *Id.* at 318-19 (discussing the "significant burden [on] employees to bear simply to avoid having their money taken to subsidize speech with which they disagree"). Accordingly, contrary to its long-standing practice, TVA, a self-financed entity whose funding comes from its ratepayers, may not provide financial support to third-party organizations engaged in political activity, regardless of the stated purpose of those funds.

Finally, the fact that most of TVA's direct sales are at wholesale rates to Large Power Companies (LPC) does not change this analysis. Given that the LPCs are collecting funds on behalf of TVA, and that TVA prescribes and approves how its LPCs charge retail rates, and thus ultimately has control over the ratepayers' compelled payments for electricity,<sup>64</sup> TVA itself is plainly subject to this vital First Amendment constraint.

## **B. TVA Also May Not Continue To Make Charitable Donations.**

Based on TVA's website, it appears that the agency maintains it has the authority to spend ratepayer funds on charitable efforts of the agency's choosing on the grounds that Congress charged "TVA with ensuring the economic, environmental, social and physical wellbeing of the people" in the Tennessee Valley.<sup>65</sup> However, Congress did not charge TVA with the large-scale re-allocation of resources from electricity ratepayers to non-profit organizations TVA may choose to support – regardless of whether those groups are doing work beneficial to the public.

To the contrary, Congress directed that only through TVA's electricity-generation projects should the agency act "for the benefit of the people . . . as a whole and particularly the domestic and rural consumers . . . ." 16 U.S.C. § 831(j). Thus, rather than giving TVA some overarching and freewheeling mandate to spread funds throughout the region, Congress directed that only through the generation and sale of power should TVA work to advance the interests of Valley citizens.

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<sup>64</sup> See TVA Act, § 10 (providing for TVA to set the "resale rate schedules"); see also *Refining The Wholesale Pricing Structure* (2015) at 2, available at [https://www.tva.gov/file\\_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/Environmental%20Reviews/2015%20Rate%20Change/2015\\_rate\\_change\\_final\\_ea.pdf](https://www.tva.gov/file_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/Environmental%20Reviews/2015%20Rate%20Change/2015_rate_change_final_ea.pdf) (explaining that "the TVA Act delegates to the TVA Board of Directors sole responsibility for establishing the rates charged to distributors and other customers for electric power supplied by TVA, as well as broad authority over distributor resale rates and conditions of service. As such, TVA not only provides electrical power to the distributors, but acts in a congressionally mandated regulatory retail rate-setting role for them. ").

<sup>65</sup> See <https://www.tva.gov/About-TVA/Community-Relations>

Accordingly, TVA should not be collecting millions of dollars through utility bills that are then spent on outside donations chosen by TVA. Rather, these costs should be removed from ratepayers, allowing *them* to decide which charitable endeavors they might choose to support. Indeed, as noted, while charitable giving is certainly a commendable endeavor, unfortunately there is a long history of utilities relying on such spending for an ulterior purpose: garnering community support that blunts objections that might otherwise be made to the utilities' own activities. Thus, for example, as detailed in the recently released report *Strings Attached: How Utilities Use Charitable Giving To Influence Politics and Increase Investor Profits* (Energy and Policy Institute, Dec. 2019),<sup>66</sup> after utilities send financial support to organizations it is not uncommon to see those organizations supporting utility rate hikes or other initiatives. *E.g. id.* at 42 (describing rate hike support from organizations receiving utility contributions). And while such overt *quid-pro-quo*s are at least detectable, there is no way to know how often those who might have raised concerns about TVA activities simply stay silent altogether to avoid risking the financial support they receive from TVA.

There is no shortage of issues of great public concern regarding TVA and its activities. These include not only electricity rates, but TVA's management of environmental matters such as coal ash and air pollution, as well as the agency's abject failure to plan for the urgently needed transition to a clean energy future. Residents of the Tennessee Valley, and the many organizations in which they participate, should not be forced to choose between raising their voices on these issues and receiving TVA funds that have been collected from those residents in the first instance. This is simply not consistent with TVA's statutory mandates. *See generally* 5 C.F.R. Part 2635 (addressing ethical responsibilities of federal employees).

Accordingly, TVA must also stop making charitable donations.<sup>67</sup>

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<sup>66</sup> Available at <https://www.energyandpolicy.org/wp-content/uploads/2019/12/Strings-Attached-how-utilities-use-charitable-giving-to-influence-politics-and-increase-investor-profits.pdf>.

<sup>67</sup> Of course, even under this approach TVA would remain free to enter into contracts with third party organizations who provide services consistent with TVA's mission.

## CONCLUSION

TVA's contributions to third party organizations engaged in activities unrelated to TVA's statutory mission is contrary to the TVA Act and should cease. Moreover, TVA's financial support to groups engaged in controversial political advocacy violates objecting ratepayers' First Amendment rights. Accordingly, please let us know within thirty days whether TVA is prepared to take appropriate action to address the issues raised in this letter, including adopting the attached proposed regulations<sup>68</sup> – and if so, when these steps will be accomplished.

We look forward to hearing from you.

Sincerely yours,



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Representative Brett Guthrie  
Representative Jim Jordan  
Representative Carolyn Maloney  
Representative Frank Pallone, Jr.  
Representative John Shimkus  
Representative Paul D. Tonko  
Representative Greg Walden

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Attachment 2.