

Colorado Joint Select Committee on Rising Utility Rates



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Recent Utility Corruption Cases

Audit: FirstEnergy improperly used ratepayer money to fund HB6 dark money efforts

POLITICS

Proposal calls for ComEd to pay \$38 million back to ratepayers for scandal tied to Michael Madigan indictment

By Ray Long
Chicago Tribune • Jun 14, 2022 at 6:07 pm

Former Ohio House speaker convicted in \$60 million bribery scheme

Unfair and deceptive acts harm consumers

- Utility customers receiving robocalls to advocate against legislation
- Paid actors supporting infrastructure spending
- Utility-supported organizations' misleading social media claims
- Paying news outlets to advocate for rate hikes, attack critics



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Plant supporters at the October 2017 meeting. Credit: Michael Stein / The Lens

Utilities' Customer-Funded Political Machines

- Litigating rate cases and contested PUC proceedings
- Trade Associations
- Issue advocacy and non-legislative lobbying
- Advertising, marketing, public and community relations

Typically paid
out of
customers' bills

-
- Corporate giving to charities (varies)
 - Legislative lobbying, narrowly defined
 - Political contributions, PAC spending, campaign spending

Typically paid
out of utility's
profits.

Do political influence costs drive up rates?

- Direct costs are real and can be in the millions or tens of millions of dollar per year for a large utility.
- Much larger costs come from sprawling political influence machines, which utilities use to push an agenda that often leads to higher rates and bills.



'It all paid off': Utility exec declared as nuclear bailout passed



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Recent Colorado rate case expenses

Utility	Gas	Electric
Xcel	\$2 million	\$2.7 million
Black Hills Energy	\$692,000	\$550,000
Atmos	\$600,000	--

- Utilities don't employ industry best practices for cost containment on these expenses.
- Utility Consumer Advocate Cindy Schonhaut noted that the \$2 million **Xcel** spent in its most recent gas rate case was more than the total budget of her office.
- **Atmos** initially estimated a \$59,000 expense to fly 16 witnesses to Denver for a *remote* hearing.

Colorado Utility Donations and Trade Association Dues

Utility		
Xcel	\$5.4 million	\$18.8 million
Black Hills Electric	\$1.1 million	\$3.2 million
Black Hills Gas	\$480,000	\$625,000
Atmos	\$121,000	\$928,000
Colorado Natural Gas	Did Not Answer PUC	Did Not Answer PUC

- Above the line is largely trade groups; below the line is largely charitable.
- Utilities say that they remove “lobbying” portions from their trade association dues, using a narrow definition based on the tax code.
- Definition does not include a broad array of political influence activities, including advocacy outside of legislation or regulations.

What does AGA do with Coloradans' \$?

- AGA spends on advertising, public relations, and social media influencers.
- An AGA VP, discussing elements of its national campaign against electrification, presented how it can help its member companies to “Build a local and/or state consumer coalition to serve as the spokesperson for the natural gas industry.”
- AGA spent \$50,000 on “Coloradans for Energy Access” group which spread misinformation on building electrification in 2021.
- None of these activities meet AGA’s definition of lobbying.



What does EEI do with Coloradans' \$?



- EEI hosted a boot camp for utility government affairs staff. Presentations included “Communicating with Special Interests,” “Preparing for Battle in Peacetime,” and “Building a Grassroots Network.”

Trade associations fight transparency in rate cases

Case Nos. 2020-00349 and 2020-00350

Attachment 2 to Response to AG-KIUC-2 Question No. 42

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Conroy / Garrett

Because the IRC definition of lobbying does not require us to separately report regulatory or other activities, as defined in the request made to you, EEI is not required, nor do we, track or account for our budget in the manner requested. As a result, EEI is unable to provide the information as you requested.



Emily Sanford Fisher
General Counsel and Corporate Secretary

Colorado Utility Advertising Expenses

Utility		
Xcel	7 million (conservation, safety)	\$11 million (brand)
Black Hills Electric	\$1.4 million (' Institutional')	\$710,000 (' Conservation')
Black Hills Gas	\$908,000	\$372,000
Atmos	\$590,000	\$0
Colorado Natural Gas	Did Not Answer PUC	Did Not Answer PUC

- Inconsistencies between annual reports and rate case outcomes.
- Xcel says it removes brand advertising per PUC rulings.
- Atmos, Black Hills Electric reported brand advertising as recoverable from customers but removed costs in most recent rate case.
- Unclear whether any utilities include salaries for staff proportionate for their time spent on marketing, communications, public relations, etc. in rates.

Lobbying and Political Influence Expenses: Colorado

Utility	2019 - 2021 Political Influence costs paid by customers	2019 - 2021 Lobbying costs paid by shareholders
Xcel	?	\$1.2 million
Black Hills Electric	?	\$430,000
Black Hills Gas	?	\$359,000
Atmos	?	\$165,000
Colorado Natural Gas	?	Did Not Answer PUC

- All utilities say that they do not charge customers for lobbying.
- Utilities' disclosure of lobbying are extremely limited and seem unlikely to include broader political influence or issues advocacy activities.
- **Xcel** reported only three lobbyists at 20% time each in 2021, and contracts. **Atmos** reported one staff lobbyist. **Black Hills** listed two staff lobbyists. No utilities listed any other staff or executives.

How do utilities define lobbying?

- Robert Kenny, Xcel, 3/14/23: “I think it’s participating in the democratic process to educate and inform our policymakers.”
- Nick Wagner, Black Hills Energy, 3/14/23: “Anything that we’re doing that is a participation in the process of bill-making, with the work that you guys do up here, we would consider that lobbying.”
- Ken Fogle, Atmos, re. electrification policy, 3/14/23: “We are working toward – not necessarily lobbying, but we are working with stakeholders and educating them so they understand what the ramifications of these decisions might be.”

What isn't included in utilities' disclosures?

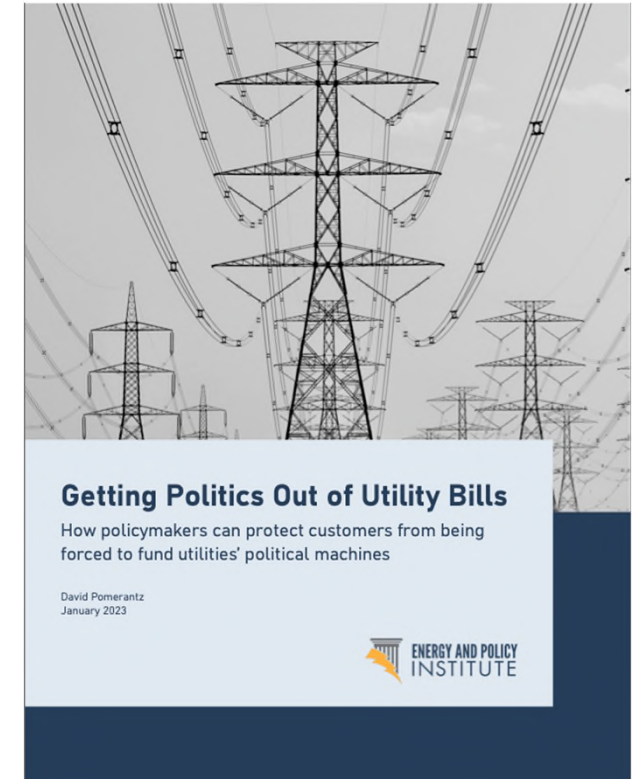
- Arizona PUC requested every APS employee or consultant doing work related to Corporate Giving, Economic/Community Development, Public/Government/Regulatory Affairs, Communications, Strategic Partnerships
- 56 job titles from just two business units; 43 of the salaries booked at least 50% to ratepayers.

ARIZONA PUBLIC SERVICE COMPANY
EMPLOYEE PERCENTAGE OF COMPENSATION IN RATES
2021

Employee Identifier	Job Title*	Annual Salary	% of Eligible Incentive**	% of Compensation in Rates***
1	Community Events Specialist			70%
2	Communication Rep Sr			100%
3	Communication Representative			100%
4	Communication Representative			70%
5	Communications Consultant			100%
6	Communications Consultant			100%
7	Communications Consultant			100%
8	Communications Consultant			100%
9	Communications Consultant			100%
10	Communications Consultant			100%
11	Communications Consultant			100%
12	Communications Consultant Sr			100%
13	Communications Consultant Sr			100%
14	Communications Consultant Sr			100%
15	Communications Consultant Sr			100%
16	Community Dev Consultant Sr			100%
17	Community Development Assoc			100%
18	Corporate Giving Specialist			0%
19	Corporate Giving Specialist Sr			0%
20	Corporate Giving Specialist Sr			0%
21	Corporate Giving Specialist Sr			0%
22	Dir Community Affairs/APS FDN			20%
23	Dir Economic Devel & Outreach			100%
24	Dir External Communications			100%

Solutions: Standards, Transparency, Enforcement

- **Standards:** Prohibit cost recovery of all spending related to political influence, including:
 - Rate case and contested proceedings
 - Trade associations
 - Charitable contributions
 - Advertising, marketing, public relations, community relations
 - Lobbying and stakeholder engagement, issue advocacy, etc.
 - Both in-house and external expenses
- **Transparency:** Annual line-item disclosure of political costs
 - Enables regulators and public to catch abuses
 - Reduces the costs of litigation for all.
- **Enforcement:** penalize violations as deterrence.
- **Statutory changes** more durable than PUC order.
 - Creates long-term certainty.
 - PUC precedent can erode and change.



Recent Utility Accountability Action

- **New York SB 1556 (2021):** prohibits utilities from recovery dues from any trade association that conducts any lobbying.
- **Connecticut SB 7 (2023, under consideration):** prohibits utilities from recovering costs of:
 - attendance, preparation, appeal of any contested proceeding.
 - Trade Association dues.
 - Lobbying or legislative action.
 - Advertising and marketing.
- **FERC RM 22-5:** Notice of Inquiry to consider changes to rate recovery and accounting treatment of political expenses.
 - Support for reform from 14 states, PUCs, large customer groups, consumer and environmental advocates.
- **KY, CA, MN PUC** denials of trade association dues

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Source links

Slide 2:

- <https://www.vox.com/energy-and-environment/2019/7/27/8910804/ohio-gop-nuclear-coal-plants-renewables-efficiency-hb6>
- <https://www.chicagotribune.com/politics/ct-comed-scandal-38-million-icc-20220614-1tg7v4s3dfu7bmmu4usfb6veu-story.html>
- <https://www.cleveland.com/news/2022/02/firstenergy-ordered-by-feds-to-refund-customers-for-house-bill-6-lobbying-costs.html>
- <https://edition.cnn.com/2023/03/09/politics/larry-householder-ohio-speaker-convicted-bribery/index.html>

Slide 3:

- <https://www.nysfocus.com/2023/03/07/fossil-fuel-gas-robocall-climate-new-york/>
- https://www.nola.com/article_7472ec54-0b89-5aaa-99d5-06ae81839e3c.html
- <https://thelensnola.org/2018/05/04/actors-were-paid-to-support-energys-power-plant-at-new-orleans-city-council-meetings/>
- <https://www.interlochenpublicradio.org/news/2021-04-05/misleading-social-media-ads-bash-a-rooftop-solar-bill-theyre-backed-by-big-utility-companies>
- <https://www.freep.com/story/news/local/michigan/2019/05/02/dte-rate-increase-michigan/3654248002/>
- <https://www.metrotimes.com/news/dte-energy-is-quietly-funding-detroit-community-leaders-who-publicly-support-the-company-23312366>
- <https://www.orlandoseninel.com/politics/os-ne-fpl-matrix-capitolist-eric-silagay-brian-burgess-20220725-p47y4wufavb4zi3qd4p3fau5ni-story.html>

Slide 5: <https://www.toledoblade.com/local/courts/2023/02/02/by-jim-provance-the-blade/stories/20230202103>

Slide 6:

- Xcel Gas: PSCo. Gas Rate Case, 22AL-0046G, Office of the Utility Consumer Advocate application for researching, reargument, or reconsideration, page 12. <https://www.documentcloud.org/documents/23660674-ucas-application-for-rehearing-reargument-or-reconsideration#document/p12/a2208941>
- Xcel Electric: PSCo. Electric Rate Case, 21AL-0317E, Hearing Exhibit 124, Attachment SPB-6. https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=961473&p_session_id=
- Black Hills Energy Electric: Proceeding No. 16AL-0326E. Decision Permanently Suspending Tariff Sheets, Establishing Rates, and Requiring Compliance Filings, Al 721 - Tariff No. 7, Dec. 2016. See page 47 https://www.dora.state.co.us/pls/efi/EFI_Search_UI.Show_Decision?p_dec=23691&p_session_id=
- Black Hills Gas: Proceeding No. 21AL-0236G, Hearing Exhibit 108, Settlement Testimony of Nick. A. Wagner, pp 23 - 25. https://www.dora.state.co.us/pls/efi/EFI.Show_Filing?p_fil=G_781620&p_session_id=
- Atmos: Atmos Rate Case, Docket 22AL-0348G, UCA Statement of Position, page 24 https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22AL-0348G
- Atmos: Atmos Rate Case, Docket 22AL -0348G, Recommended Decision: https://www.dora.state.co.us/pls/efi/EFI_Search_UI.Show_Decision?p_dec=29872&p_session_id=

Slide 7: Data from 2019, 2020, and 2021 Energy Annual Reports, Appendix A responses, filed by utilities to the Colorado Public Utilities Commission.

- 2021 Proceeding: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22M-0010EG
- 2020 Proceeding: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21M-0010EG
- 2019 Proceeding: http://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=20M-0010EG
- "Utilities say that they remove the "lobbying" portions from their trade association dues, using a narrow definition of lobbying based on the tax code." See AGA, EEI responses to FERC Docket No. RM22-5-000, "Rate Recovery, Reporting, And Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses." Or see 2017 Energy and Policy Report, "EPI report: Paying for Utility Politics: How ratepayers are forced to fund the Edison Electric Institute and other political organizations, May 2017. <https://www.energyandpolicy.org/utility-ratepayers-fund-the-edison-electric-institute/>

Slide 8:

- AGA's spending and political activity, see "AGA uses millions of dollars from utility customers to promote a fossil fuel agenda." <https://www.energyandpolicy.org/gas-utilities-greenwashing-to-expand-fossil-fuels-rng-hydrogen/aga-uses-millions-of-dollars-from-utility-customers-to-promote-a-fossil-fuel-agenda/>.
- "Build a local and/or state consumer coalition to serve as the spokesperson...": See Slide 8 of slide deck from AGA Leadership Conference Call March 31, 2020. Linked from <https://www.energyandpolicy.org/full-transcript-aga-leadership-conference-call-march-31st-2020/>.
- AGA \$50,000 contribution to "Coloradans for Energy Access": 2021 American Gas Association Form 990. <https://www.documentcloud.org/documents/23569562-2021-american-gas-association-form-990#document/p31/a2226293>
- AGA's definition of lobbying: See AGA response to FERC Docket No. RM22-5-000, "Rate Recovery, Reporting, And Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses."

Slide 9: "EEI used anti-clean energy campaigns as role models in political boot camp for utility execs." Energy and Policy Institute, 8/27/2020. <https://www.energyandpolicy.org/eei-campaign-institute/>

Slide 10: Kentucky PSC case No. 2020-00350. https://psc.ky.gov/pscscf/2020-00350/rick.lovekamp%40lqe-ku.com/02192021010947/03-AG-KIUC_DR2_LGE_Responses-Vol_1_of_2%28Q42-Q82%29.pdf

Slide 11: Data from 2019, 2020, and 2021 Energy Annual Reports, Appendix A responses, filed by utilities to the Colorado Public Utilities Commission. (See links under Slide 7 citations.)

- Atmos treatment of advertising in rates: Atmos Energy Rate Case, 21AL-0317E, Hearing Exhibit 102, Direct Testimony of Joe T. Christian, Page 41 https://www.dora.state.co.us/pls/efi/efi.show_document?p_dms_document_id=977771&p_session_id=
- Black Hills Colorado Gas Rate Case, 21AL-0236G, Hearing Exhibit 102, Direct Testimony of Michael C. Clevinger.pdf, page 35. https://www.dora.state.co.us/pls/efi/efi.show_document?p_dms_document_id=947370&p_session_id=

Slide 12: Data from 2019, 2020, and 2021 Energy Annual Reports, Appendix A responses, filed by utilities to the Colorado Public Utilities Commission. (See links under Slide 7 citations.)

Slide 13: Joint Select Committee on Rising Utility Rates. March 14, 2023. Audio recording at: <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20230315/171/14190>

Slide 14: "Arizona regulator investigation unveils Arizona Public Service Company's political spending." Energy and Policy Institute, 6/14/2022. <https://www.energyandpolicy.org/arizona-regulator-investigation-unveils-arizona-public-service-companys-political-spending/>

Slide 15: "Getting Politics Out of Utility Bills." Energy and Policy Institute, 1/26/2023. <https://www.energyandpolicy.org/utility-political-machines/>

Slide 16:

- New York SB 1556: <https://www.nysenate.gov/legislation/bills/2021/s1556>
- See Sections 2 and 3 of Connecticut SB 7: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00007&which_year=2023
- FERC RM 22-5: <https://www.ferc.gov/media/e-2-rm22-5-000>
- KY PSC denial of trade association dues: Case No., 2020-00350, https://psc.ky.gov/pscscf/2020%20Cases/2020-00350//20210630_PSC_ORDER.pdf
- MN PUC denial of trade association dues: Case No. GR-15-424, https://www.documentcloud.org/documents/23713060-mn-puc-findings-of-fact-conclusions-and-order_gr-15-424-centerpoint-rate-case
- CA PUC denial of trade association dues: Docket A1609001, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M291/K678/291678149.PDF>