July 21, 2026

Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, LA 70821-9154

Re: Proposed Interim Rule 10a — Mandatory Disclosure of Funding Sources by Intervenors

To the Commissioners:

We write to express concerns regarding proposed Interim Rule 10a, which purports to require intervenors in Louisiana Public Service Commission proceedings to disclose extensive information regarding their funding sources, including support originating from outside Louisiana and certain foreign entities. Our organizations have a shared interest in public affairs in Louisiana and safeguarding First Amendment-guaranteed privacy protections for nonprofits and their supporters.

The proposal raises serious constitutional concerns and, as a practical matter, risks undermining the quality and breadth of information received by the Commission. To the extent the Commission is concerned with the foreign governments of countries of concern, like China and Russia, interfering in the Commission's affairs, the proposed rule should focus on that narrower concern. But the directive for disclosure proposed at the Commission's April 15 proceedings is far broader and not sufficiently tailored to a legitimate government interest.

At the June meeting, the Commission made strides toward acknowledging the significant First Amendment concerns with this proposal.

I. Constitutional Concerns

Forcing any organization that wishes to speak to the Commission to fully disclose "all sources of funding" is an assault on core First Amendment rights protected by the Constitution.

The U.S. Supreme Court has repeatedly recognized that compelled disclosure of organizational affiliations, supporters, and funding relationships can chill speech and association, particularly in the context of advocacy organizations that participate in public policy debates. In *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), the Court held that "exacting scrutiny" applies to such compelled disclosure schemes. Exacting scrutiny "requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest" . . . and "that the disclosure requirement be narrowly tailored to the interest it promotes." *AFPF*, 594 U.S. at 611.

Any proposed rule would fail to satisfy all prongs of that standard.

First, the proposal sweeps extraordinarily broadly. Intervenors to whom the proposed rule would apply can include any interested party who intends to speak before the Commission. Many First Amendment-protected activities – like commenting on proposed rules, providing evidence, or filing complaints – would be significantly hamstrung by this proposed rule.

In practice, any proposal that expanded disclosure to individual donors would mean nonprofits could not effectively engage with the Commission. Forcing groups to make this choice – whether to engage with the government and violate their supporters' privacy or to refrain from speaking – is an unconstitutional condition that fails exacting scrutiny.

Second, the proposal appears disconnected from any demonstrated problem impacting the Commission and thus fails the "sufficiently important governmental interest" prong. Satisfying exacting scrutiny requires more than generalized assertions regarding transparency or public confidence.

Whether past intervenors had substantial out-of-state support is simply not relevant to whether they meet the standard for intervention and will not provide relevant and useful information to the Commission. No court has blessed these types of sweeping disclosure regimes without a significant record of a risk of corruption or other similar interest. Aside from a broad reference to the "integrity" of the Commission's process, the body offers no evidence of a compelling interest it is trying to address. This is equally true for disclosure related to aggregate out-of-state donations.

Third, the required disclosure is not tailored. The Commission must demonstrate a real and substantial relationship between the compelled disclosure regime and the identified compelling governmental interest. The initial proposed rule did not limit disclosures in any relevant way, much less tailor them. Comments at the June meeting seem to demonstrate that the Commission is aware of this issue, but it is important to emphasize how much tailoring is required.   If the proposal is intended to include grants, donations, contracts, and all other forms of financial support, even aggregate limitations or limitations to foreigners would be insufficient – both because the practical cost of compliance is so high and because the justification for such rules has not been met

The Supreme Court emphasized in *AFPF v. Bonta* that broad disclosure mandates are constitutionally suspect when less intrusive alternatives are available. If the Commission has demonstrable concerns regarding direct participation in agency proceedings by hostile foreign governments, it could pursue targeted disclosures limited to that class of intervenors. Instead, the proposal imposes sweeping disclosure obligations on nonprofits, advocacy groups, businesses, and trade associations. None of this information is relevant to the Commission.

Limiting the disclosure of contributions to out-of-state sources is also not sufficient. There are many plainly legitimate reasons both for out-of-state parties to be interested in the Commission's work and for groups that are interested parties to receive out-of-state support not tied to the nonprofit's work before the Commission. Courts have not permitted states to restrict First Amendment rights at state borders. See *Thompson v. Hebdon*, 7 F. 4th 811, 825 (9th Cir. 2021) ("Nor does Alaska show that an out-of-state contribution of $500 is inherently more corrupting than a like in-state contribution").

Compelled disclosure is itself a constitutional harm, a burden the Court recently reiterated in a *unanimous* opinion in *First Choice v. Davenport*, 608 U.S. __ (2026). Many organizations rely on donor privacy to protect their members and supporters from harassment, retaliation, or reputational harm. Over nearly seven decades, the Supreme Court has repeatedly recognized that compelled disclosure can deter participation in civic organizations and advocacy efforts, thereby burdening First Amendment rights even absent a direct prohibition on speech.

II. Practical and Institutional Concerns

Beyond the constitutional concerns, the proposed rule is likely to impair the Commission's own decision-making process by discouraging meaningful participation from outside organizations and stakeholders with an interest in the Commission's work. The Commission should welcome engagement – even engagement it disagrees with.

Administrative bodies function best when they receive robust information, technical expertise, legal analysis, economic perspectives, and policy feedback early in the regulatory process. Intervenors frequently provide this information. This broader participation improves the quality of the factual record and helps identify problems before decisions are finalized.

This is true regardless of the quality, purpose, and ideology of the input. If an intervenor provides strong evidence in support of proposed agency action, the agency can be more confident that the agency's trajectory is correct and may also use that evidence to support any future legal challenge. If an intervenor provides strong evidence in opposition, the agency has the opportunity to change course and amend its decisions – which is also beneficial to the Commission and the Louisianans affected by its decision.

But if an intervenor provides weak evidence, that is equally helpful to the Commission. If that evidence is in support of a proposed action, the Commission now knows it needs to bolster its case with more evidence of its own. If that weak evidence opposes a proposed action, the Commission has time to debunk and counter it – which is both helpful for fending off future litigation and for communicating the purpose of the agency action in the first place.

If the proposed rule goes into effect, groups with relevant input may remain quiet before the Commission, which will in turn lead to worse rules, poorer justification, more lawsuits, and less effective work being done for the citizens of Louisiana.

And, given the burdens imposed by the proposal, groups will stay quiet. Organizations may be required to:

- trace funding through multiple intermediary organizations;
- disclose sensitive donor relationships unrelated to the proceeding at issue;
- publicly identify contributors who have no involvement in the Commission matter, thereby associating them with action they had no knowledge of;
- and force significant ongoing compliance obligations.

For many organizations, particularly smaller or resource-constrained groups, these obligations will function as a practical barrier to participation. The likely result is not greater transparency, but reduced engagement.

The Commission benefits when a broad range of stakeholders are able to participate in proceedings. Rules that deter participation risk reducing the quality of the Commission's decision-making process rather than strengthening it.

Conclusion

The Commission has a legitimate interest in maintaining the integrity of its proceedings. This proposed disclosure regime would harm, not help that interest.

Proposed Interim Rule 10a raises substantial First Amendment concerns. It will discourage the very participation that helps ensure informed and effective regulatory decision-making.

We are encouraged by recent amendments to this rulemaking, but encourage the Commission to continue to narrow and focus their efforts and the Commission should decline to adopt any rule requiring such a broad disclosure regime.

Respectfully submitted,