UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

BlackRock, Inc. its affiliated Investment Management Subsidiaries and Applicant Funds	)))	Docket No. EC25-12

STATES' PROTEST

Applicants[1] have submitted to the Federal Energy Regulatory Commission ("FERC" or the "Commission") a Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act and Request for Expedited Consideration (the "Request"). The Arizona Corporation Commission, joined by the States of Utah, Arkansas, Florida, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wyoming (the "States"), through the undersigned Attorneys General, submit this protest to Applicants' Request.[2]

The Commission must not approve BlackRock's application under Section 203 of the Federal Power Act ("FPA")[3] unless the Commission 1) requires all of the requirements discussed in this protest as a condition of the blanket authorization; 2) conducts an evidentiary hearing or other sufficient process to determine that Applicants are in fact in compliance with the following requirements (except the new recordkeeping requirement) prior to granting any reauthorization; and 3) makes ongoing compliance with these requirements subject to meaningful periodic

[1] "Applicants" refers to BlackRock, Inc., the Investment Management Subsidiaries, and the Applicant Funds, collectively. Unless context otherwise requires, "BlackRock" refers to BlackRock, Inc., and its subsidiaries.
[2] Many of the States' arguments in this protest are similar to the arguments raised in certain of the States' previous filings, including the States' comment to the Notice of Inquiry in Docket No. AD24–6–000 and the States' Motion to Intervene and Motion for Relief Regarding BlackRock's Blanket Authorizations in Docket No. EC16-77-002.
[3] *See* 16 U.S.C. §§ 824b(a)(2), (b), 825h.

reporting requirements and the Commission's supplemental order authority under Sections 203(b) and 309 of the FPA.

The States also request a hearing on the issues raised in this protest in order to comprehensively assess the circumstances by which BlackRock's control and influence over utilities may be undermining competition and threatening just and reasonable rates, as the current record in this proceeding fails to provide justification for granting blanket authorizations to BlackRock to vote the voting securities of public utilities. There is time to complete this hearing. BlackRock's current authorization does not expire until April 19, 2025, which is over five months away. Moreover, if a hearing is not completed within that timeframe, the Commission can provide a shorter extension until completion of the hearing. But BlackRock has provided no sufficient basis to receive an additional three-year blanket authorization, where serious factual issues are outstanding.

COMMUNICATIONS AND CORRESPONDENCE

Please direct all communications and correspondence regarding this proceeding to the names and addresses listed in the Arizona Corporation Commission's Notice and the States' concurrently filed Motion to Intervene.

ARGUMENT

The Commission should not grant Applicants' request for reauthorization under Section 203 of the FPA unless the Commission requires the following four conditions as prerequisites for blanket authorization.

First, the Commission must require that Applicants, including all affiliates and subsidiaries, limit their collective ownership to 20% or less of the shares of each FPA-covered

utility.[4] Shares held by other members of any horizontal association that seeks to influence an FPA-covered utility's operations and that any Applicant or affiliate of an Applicant is a member of must be included in the 20% collective limit because such organizations including their members fall within the definition of "holding company."[5] The definition of "holding company" is broad and covers an "association" or unincorporated "organized group" consisting of a horizontal association and its investor signatories acquiring shares in utilities.[6]

One or more Applicants (or an affiliate or subsidiary in the case of BlackRock International) remains a member of the Net Zero Asset Manager's initiative ("NZAM"), Climate Action 100+ ("CA100+"), Ceres, Inc., and/or UN PRI .[7] Whether each of these involves commitments and meets the requirement of a "holding company" requires further analysis but the below facts show a sufficient basis that the Commission must actually inquire before granting another blanket authorization.[8]

Second, Applicants must function only as passive investors.[9] The passivity commitment must prohibit not just controlling utilities but also using ownership to influence control or day-to-day operations of such utilities. The Commission's 2016 BlackRock Order required Applicants, when filing a Schedule 13D, not to (among other things) "[s]eek to determine or influence whether

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[4] *See, e.g.*, *Franklin Res., Inc.*, 126 FERC ¶ 61,250 at P 39–40 (2009), *order on reh'g*, 127 FERC ¶ 61,224.
[5] 16 U.S.C. § 824b(a)(6).
[6] *Id.*; 42 U.S.C. § 16451(4), (8)(A), (12).
[7] NZAM, *Signatories*, https://www.netzeroassetmanagers.org/signatories/; Climate Action 100+, *Investor Signatories*, https://www.climateaction100.org/whos-involved/investors/page/3/; BlackRock, *Letter to Climate Action 100+ Steering Committee* (Feb. 2, 2024), https://www.blackrock.com/corporate/literature/publication/2024-our-participation-in-climate-action-100.pdf; Ceres, *BlackRock CEO letter on sustainable investing is a game changer for the global investor and corporate community*, https://www.ceres.org/resources/news/blackrock-ceo-letter-on-sustainable-investing-is-a-game-changer-for-the-global-investor-and-corporate-community; BlackRock, *Principles for Responsible Investment*, https://www.blackrock.com/corporate/sustainability/pri-report.
[8] *See, e.g.*, *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983).
[9] *See, e.g.*, *BlackRock, Inc.*, 179 FERC ¶ 61,049 at ¶ 13 (2022).

generation, transmission, distribution or other physical assets of the Utility are made available or withheld from the marketplace."[10] These requirements should be carried forward into any reauthorization and apply to Applicants regardless of whether they file a Schedule 13G or 13D for an FPA-covered utility. These requirements must also apply not just to Applicants acting themselves but also in connection with membership in any organization or association that seeks in any way to influence utility operations. Any reauthorization order must also prohibit Applicants from coordinating their engagement, voting, or investment decisions with any external groups or organizations.

Third, Applicants must hold the shares subject to their fiduciary duties to their investors, including the duty to act in the sole financial interest of the investors.[11]

Fourth, the Commission should require specific reports by Applicants of every instance when the asset managers voted contrary to the recommendation of utility management on a shareholder proposal or board of director nomination, as well as an explanation of how such votes were consistent with the asset manager's commitments to FERC. Asset managers should also be required to report on all engagements with FPA-Covered Utilities.

In addition to requiring Applicants to meet the preceding four conditions, the Commission should also conduct an evidentiary hearing or other sufficient process to determine that Applicants are in fact in compliance with the first three conditions above prior to granting any reauthorization.

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[10] *BlackRock, Inc. & Its Affiliated Inv. Mgmt. Companies & Applicant Funds*, 155 FERC ¶ 62,051, 2016 WL 1611067, at *2 (2016).

[11] *See, e.g.*, *Morris v. Wachovia Sec., Inc.*, 277 F. Supp. 2d 622, 644 (E.D. Va. 2003) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)) ("[T]he IAA creates a fiduciary duty on the part of investment advisers to exercise good faith and fully and fairly disclose all material facts to their clients, and an affirmative obligation 'to employ reasonable care to avoid misleading [their] clients.'"); *see also Malouf v. SEC*, 933 F.3d 1248, 1265 (10th Cir. 2019) ("The Act prohibits investment advisers from engaging in a fraudulent or deceptive transaction, practice, or course of business. Investment Advisers Act, 15 U.S.C. § 80b–6(2). This prohibition imposes a fiduciary duty of loyalty on investment advisors…."); *Goldstein v. SEC*, 451 F.3d 873, 881 (D.C. Cir. 2006).

The Commission should further make ongoing compliance with all four conditions subject to meaningful periodic reporting requirements and the Commission's supplemental order authority under Sections 203(b) and 309 of the FPA.

ARGUMENT

I. The Commission must require BlackRock and affiliates to limit their collective ownership to 20% or less of the shares of each FPA-covered utility, and that limit must apply to all members of horizontal associations.

As stated previously, BlackRock is a member of NZAM, and BlackRock used to be a member of CA100+ during the term of its current blanket authorization. A BlackRock subsidiary, BlackRock International, remains a member of CA100+.[12] Both NZAM and CA100+ are "holding companies" under the FPA, yet BlackRock has apparently failed to seek authorization for its membership in these holding companies in its Request or two prior requests.

To begin, both CA100+ and NZAM, including their members and signatories, fall under the plain language of a "holding company" in Section 203 of the FPA. On information and belief, neither of these larger holding companies has received Commission approval to acquire shares (through its members) in utilities beyond the limits in FPA Section 203. Further, even if these holding companies were to seek authorization now, the Commission has established a limit of 20% ownership by any asset-manager holding company, and each organization's members collectively hold more than that limit for certain utilities.[13] The Commission also has required holding companies to agree to conditions, which CA100+ and NZAM have never agreed to—the

[12] *See* https://www.blackrock.com/corporate/literature/publication/2024-our-participation-in-climate-action-100.pdf. The states are not aware of which legal entity or entities constitute "BlackRock International," but notes that the organization charts submitted as part of BlackRock's Application (at Exhibit C, p. 22-27) has multiple subsidiaries with the word "International" in their name. This only underscores the need for the Commission to conduct an evidentiary hearing and to establish effective passivity commitments prior granting any reauthorization.

[13] 2022 BlackRock Order limited equity ownership in aggregate by BlackRock and its affiliates or subsidiaries in any utility to 20%, or up to 10% ownership by any individual BlackRock fund.

Commission does not simply rubber stamp whatever ownership a holding company seeks.[14] CA100+'s and NZAM's actions are therefore contrary to the Commission's requirements for Section 203 of the FPA. And BlackRock, as a member of NZAM and a former member of CA100+, would likewise be in violation of Section 203 for the collective actions of the larger holding companies that have not been authorized.

Section 203(a)(2) of the FPA prohibits a "holding company in a holding company system that includes a transmitting utility or an electric utility" from "purchas[ing], acquir[ing], or tak[ing] any security with a value in excess of $10,000,000 . . . without first having secured an order of the Commission authorizing it to do so." [15] Companies may request "blanket authorizations" from the Commission.[16] The Commission will approve such an application only if its finds that doing so is consistent with the public interest in light of competition, rates, and regulation.[17] The Commission historically issues blanket authorizations for three-year terms, requiring investment companies to re-apply for reauthorization periodically.[18] The Commission also retains ongoing authority when it issues a blanket authorization.[19] These requirements are all appropriate.

The definition of "holding company" is broad and covers an "association" or unincorporated "organized group" consisting of a horizontal association *and* its investor signatories acquiring shares in utilities. Section 203(a)(6) of the FPA provides that the term "'holding company' . . . [has] the meaning given [it] in the Public Utility Holding Company Act

[14] *See, e.g.*, *Franklin Res., Inc. & Its Inv. Mgmt. Subsidiaries & Applicant Funds*, 127 FERC ¶ 61,224, 62,007 (2009) (noting "Applicants' commitment not to engage in certain specified activities that could lead to the exercise of control over the management or affairs of a U.S. Traded Utility.").
[15] *See* 16 U.S.C. § 824b(a)(2); 18 C.F.R. § 33.1(c)(2)(ii); *see also* 42 U.S.C. § 16451(8)(A).
[16] *See, e.g.*, *Cap. Rsch. & Mgmt. Co.*, 116 F.E.R.C. ¶ 61,267 at P 28 (2006).
[17] 18 C.F.R. § 2.26(b); *see also* 16 U.S.C. § 824b(a)(4) (setting forth general "consistent with the public interest" standard).
[18] *See, e.g.*, *T. Rowe Price Grp., Inc.*, 179 F.E.R.C. ¶ 62,124 at Ordering Paragraph (4) (2022).
[19] 16 U.S.C. § 824b(b); *see also New PJM Companies*, 107 FERC ¶ 61,271, 62,210 (2004).

of 2005" ("PUHCA").[20] The PUHCA provides that the definition of "holding company" is met by either of the following:

> (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and
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> (ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this part upon holding companies.[21]

The PUHCA further defines "company" as "a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing."[22] And it defines a "person" as "an individual or company."[23]

Groups of asset managers that have joined organizations whose purpose is to push utilities to change their operations (for environmental goals or otherwise) fall within the plain language of the first definition of "holding company." This is because they constitute an "association" or "any organized group of persons, whether incorporated or not." For example, NZAM has official signatories who commit, among other things to: "[w]ork in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach *net zero emissions by 2050 or sooner across all [AUM]*"; to "*ratcheting up the proportion of AUM covered until 100% of assets are included*"; and, "[a]cross all [AUM] . . . [to i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [the] ambition for all [AUM] to

[20] 16 U.S.C. § 824b(a)(6).
[21] 42 U.S.C. § 16451(8)(A).
[22] 42 U.S.C. § 16451(4) (emphasis added).
[23] *Id.* § 16451(12).

achieve net zero emissions by 2050 or sooner."[24] These commitments necessarily entail seeking changes in utility operations. The International Energy Agency's *Net Zero Roadmap* shows Electricity Generation Shares for all fossil fuels being cut from 61% in 2020 to 26% by 2030 and to 2% by 2050.[25] It is hard to imagine a more direct and substantial change in operations than switching over 60% of the sources of generation, including early retirements.

Moreover, even just a few of the largest NZAM members collectively own more than 20% of various U.S. utilities, as shown by the following examples. This is significant because FERC limits share ownership in utilities to 20% when it provides blanket authorizations.

Table 1: FirstEnergy

Company Name	**Percentage Ownership[26]**	**Membership**
Capital Group (Capital Research and Management Company)	13.6%	Member of NZAM
Vanguard	11.3%	Former member of NZAM (until 12/2022)
BlackRock	7.5%	Member of NZAM
State Street	7.6%	Member of NZAM
Total (including Vanguard)	**38.9%**	
Total (excluding Vanguard)	**27.6%**	

[24] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/ (emphasis added).
[25] IEA, *Net Zero by 2050: A Roadmap for the Global Energy Sector* at 31, 199 (Table A.3: Electricity), https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.
[26] FirstEnergy, *Institutional Ownership*, https://investors.firstenergycorp.com/stock-information/ownership/default.aspx.

Table 2: Ameren

Company Name	**Percentage Ownership**[27]	**Membership**
T. Rowe Price (Price Associates Inc and T. Rowe Price Investment Management Inc.)	13.8%	Member of NZAM
Vanguard	12.7%	Former member of NZAM (until 12/2022)
BlackRock	7.2%	Member of NZAM
State Street	4.8%	Member of NZAM
Invesco	1.7%	Member of NZAM
Total (including Vanguard)	**40.2%**	
Total (excluding Vanguard)	**27.5%**	

The interpretation of "holding company" discussed above is consistent with Commission precedent. First, the Commission has already described the definition of "corporation" (in Section 3(3) of the FPA) as "very broad."[28] Therefore this "very broad" term must be given its full scope when applied to horizontal associations or organizations of asset managers, just as it should for any other application. Second, in the analogous context of interpreting the Natural Gas Act, the Commission has held that a committee of operators, the "Cotton Valley Operators Committee," "[c]ertainly . . . comes within the definition of the term 'person' . . . since it is at the very least, an organized group of persons"; it was thus a "Natural-gas company" under that act.[29] Just as the operators committee fell within the definition of a "Natural-gas company," an association of asset managers that influences control over utilities falls within the definition of "company" for purposes of the analogous definition in the FPA.

[27] Yahoo Finance, *Ameren Corporation (AEE)*, https://finance.yahoo.com/quote/AEE/holders/.
[28] 16 U.S.C. § 796(3); *New Reporting Requirement Implementing Section 213(b) of the Fed. Power Act & Supporting Expanded Regul. Resps. Under the Energy Pol'y Act of 1992 & Conforming & Other Changes to Form No. FERC-714*, 65 FERC ¶ 61,324, 62,452 (1993).
[29] *Midstates Oil Corp.*, 20 F.P.C. 70, 88 (1958).

Horizontal associations also meet the second definition of "holding company," given the massive AUM and express commitment to influence utility company operations.[30] The Commission has explained that the second definition "pertains to situations where the entity does not fall within the formal definition of a holding company set forth in [42 U.S.C. § 16451(8)(A)(i)], but there is nevertheless a reason to treat that entity as a holding company."[31]

The critical point is that organized groups, which must obtain FERC approval, are not seeking or receiving such approval through blanket authorizations or otherwise. As a result, each of these groups is not committing to FERC to operate as passive investors that do not seek to influence control of utilities, to comply with the fiduciary duty to act solely for the financial interest of investors, and to keep collective ownership under 20%. When reviewing BlackRock's pending Request, the Commission should consider the implications of BlackRock's membership in NZAM, as well as BlackRock and BlackRock International's former and present membership, respectively, in CA100+.[32] [33]

II. Applicants must function only as passive investors.

A. Applicants have repeatedly represented that they would act only as passive investors.

BlackRock and its affiliates have consistently represented themselves as "passive investors" when seeking blanket authorization and reauthorizations. The Commission originally

[30] 42 U.S.C. § 16451(8)(A)(ii).
[31] *Horizon Asset Mgmt., Inc.*, 125 FERC ¶ 61,209, 62,087 (2008).
[32] Even apart from BlackRock's membership in unauthorized holding companies like NZAM, Applicants are easily distinguished from those of substantially smaller asset managers. *See* Request at 13 & n.36 (citing Capital Research and Management Company, et. al., 188 FERC ¶ 62,153 (Sept. 25, 2024); Mario J. Gabelli, et. al., 187 FERC ¶ 62,060 (Apr. 23, 2024)). The Commission's own Notice of Inquiry specifically cited the three largest investment companies, which includes BlackRock. *See* Dkt. AD24-6, 88 Fed. Reg. 89,346 at 89,349 & n.28.
[33] Pinnacle West Capital Corporation is an investor-owned electric utility holding company based in Phoenix, Arizona. *See* https://www.pinnaclewest.com/about-us/default.aspx. Pinnacle West's main subsidiary is Arizona Public Service, which operates in Arizona and is subject to the jurisdiction of the Arizona Corporation Commission, which has intervened in this docket. BlackRock owns over 9% of the stock in Pinnacle West Capital Corporation. *See* https://finance.yahoo.com/quote/PNW/holders/.

granted BlackRock's "blanket authorization" in 2010 for certain acquisitions of utility voting securities that would otherwise be prohibited by Section 203(a)(2) of the FPA.[34] By regulation, upon receipt of an application, the Commission determines whether the proposed transaction is "consistent with the public interest" in light of its possible effects on competition, rates, and regulation.[35] Section 203(b) of the FPA authorizes the Commission to grant applications "in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest."[36]

The 2010 BlackRock Order allowed BlackRock to acquire the voting securities of any FPA-covered utility, up to 20% ownership in aggregate by BlackRock and its affiliates or subsidiaries or up to 10% ownership by any individual BlackRock fund.[37]

The Commission granted the blanket authorizations based on Applicants' "commit[ment] . . . not [to] exercise control over the day-to-day management or operations" of utilities.[38] Applicants assured the Commission that their investments were merely "passive," and that they acquired voting securities in FPA-covered utility companies "in the ordinary course of . . . [their] business and not with the purpose nor with the effect of changing or influencing the control of the issuer."[39] Applicants stated they would act in a manner that would limit them to filing Schedule 13G forms and "maintain[ed] that . . . **any activity designed to** replace the issuing company's management or **influence the day-to-day commercial conduct of its business** constitutes an

[34] *See* 16 U.S.C. § 824b(a)(2); 2010 BlackRock Order.
[35] 18 C.F.R. § 2.26(b); *see also* 16 U.S.C. § 824b(a)(4) (setting forth general "consistent with the public interest" standard). In determining whether the proposed transaction is in the public interest, the Commission considers the possible effect on competition, rates, and regulation. 18 C.F.R. § 2.26(b); *see also Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996).
[36] 16 U.S.C. § 824b(b).
[37] 2010 BlackRock Order at 33; *see* 16 U.S.C. § 824b(a)(2).
[38] *Id.* at 15, 33.
[39] Request for Authorizations to Acquire Securities Under Section 203(a)(2) of the Federal Power Act, *BlackRock, Inc.*, Docket No. EC10-40-000, at 21, 24–25 (filed Jan. 20, 2010) ("2010 Application").

attempt at control and therefore renders an acquiring person ineligible to file a Schedule 13G."[40] This was a key representation by Applicants to the Commission when obtaining initial blanket authorization in 2010.

The Commission reauthorized the blanket authorizations in 2013 based on the similar representation that "Applicants will be non-controlling, passive investors," and Applicants were again limited to activities that would qualify for filing a Schedule 13G.[41] The 2013 order makes clear that Applicants did not seek any broader authority to exercise control than what they sought and represented in 2010.

In 2016, Applicants once again represented that they would be "non-controlling, passive investors."[42] They sought broader authority to exercise control in a way that would require them to file Schedule 13D forms, but Applicants were clear that even in that scenario they would not, among other things, "**[s]eek to determine or influence whether generation, transmission, distribution or other physical assets of the Utility are made available or withheld from the marketplace**," or "**[s]eek to participate in or influence any other operational decision of the Utility**."[43]

In 2019, Applicants told the Commission that "there have been no changes in material facts and circumstances that would alter or affect the Commission's consideration in the prior authorization orders."[44]

In 2022, Applicants continued their representation to the Commission that they would function as "passive, non-controlling investors," and that "the interests acquired by the Applicants

[40] 2010 BlackRock Order at 21 (emphasis added).
[41] *BlackRock, Inc.*, 143 FERC ¶ 62,046 (2013) ("2013 BlackRock Order").
[42] 2016 BlackRock Order.
[43] *Id.* at ¶ 62,051.
[44] *BlackRock, Inc.*, 167 FERC ¶ 62,049 (2019) ("2019 BlackRock Order").

would be passive."[45] The Commission did not hold a hearing or receive any economic evidence related to BlackRock's application. Instead, "[b]ased on Applicants' commitments, [the Commission found] that the Reauthorization will not have an adverse effect on competition, rates, or regulation."[46] The Commission further rejected Public Citizen's protest on the ground that "Applicants have provided assurances sufficient to demonstrate that they will not be able to influence control over U.S. Traded Utilities."[47] As with the prior orders, the 2022 BlackRock Order limited equity ownership in aggregate by BlackRock and its affiliates or subsidiaries in any utility to 20%, or up to 10% ownership by any individual BlackRock fund.[48]

In the pending Request, Applicants assert that "[t]he material facts upon which the 2022 Blanket Reauthorization Order was based have not changed and the Applicants request the New Reauthorization on the same terms and conditions as approved in the 2022 Blanket Reauthorization Order."[49] Applicants further assert that they are "passive, non-controlling investors" who "commit to continue to meet" that order's prohibition against "exercis[ing] control over the day-to-day management or operations" of FPA-covered utilities.[50]

B. Blackrock participates in horizontal associations or organized groups that leverage shares to actively influence utility companies to change their operations.

Applicants' representations that they would act as "passive investors" warrant ongoing review and action by the Commission. On information and belief, BlackRock did not inform the Commission in its 2022 application or in its pending Request that, in 2020 and 2021, it formally joined with other asset managers in associations or organized groups—including CA100+ and

[45] 2022 BlackRock Application at 10–12.
[46] 2022 BlackRock Order at 15.
[47] *Id.* at 19.
[48] *Id.* at Ordering Paragraph (B).
[49] Request at 2.
[50] Request at 6, 11.

NZAM—whose mission is to leverage shareholder voting power to influence companies to adopt "net zero by 2050."[51] This agenda includes major changes in utility operations, such as reducing fossil-fuel usage in order to reach net zero targets. The horizontal associations to which BlackRock belongs (or has belonged during the term of its blanket authorizations) collectively hold more than 20% of the equity in FPA-covered utilities, and they are coordinating to influence control over utility company operations.

1. Climate Action 100+

BlackRock joined CA100+ in January 2020.[52] CA100+ is a horizontal organization of asset managers and asset owners that at one time had approximately $68 trillion AUM.[53] In addition to its signatories, CA100+ identifies 170 "focus companies" that are "key to driving the global net zero emissions transition."[54] Several U.S.-based utility companies are among CA100+'s targeted "focus companies," including: Dominion Energy, Inc.; Duke Energy Corp.; FirstEnergy Corp.; NextEra Energy, Inc.; NRG Energy, Inc.; The Southern Company; Vistra Corp.; and Xcel Energy Inc.[55]

CA100+ "has established a common high-level agenda for [focus] company engagement to achieve clear commitments to cut emissions."[56] CA100+'s commitment requires signatories

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[51] Whether BlackRock reserved the right to act independently, its membership is still part of an "association" or "any organized group or persons, whether incorporated or not," which is the language of the statute. *See* 16 U.S.C. § 824b(a)(6); 42 U.S.C. § 16451(4). And BlackRock cannot claim it was unaware that its membership had significance. It put out a statement acknowledging that "[c]ertain types of collective action can have regulatory ramifications." https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf.

[52] https://www.climateaction100.org/news/blackrock-joins-climate-action-100-to-ensure-largest-corporate-emitters-act-on-climate-crisis/.

[53] *See* CA100+, Investor Signatories (Aug. 4, 2023), https://web.archive.org/web/20230804203106/https://www.climateaction100.org/whos-involved/investors/.

[54] CA100+, *Companies*, https://www.climateaction100.org/whos-involved/companies/.

[55] *Id.*

[56] CA100+, *The Three Asks* (Mar. 30, 2023), https://web.archive.org/web/20230330063348/https://www.climateaction100.org/approach/the-three-asks/

(*e.g.*, asset managers) to push the focus companies in which they own shares to "take action to reduce greenhouse gas [GHG] emissions,"[57] and to align their actions with the Paris Agreement and pathways to net zero GHG emissions.[58]

CA100+ has now moved to "Phase 2," which is a renewed call of its signatories "to action"[59] in using their AUM to pressure companies to "[t]ake action to reduce [GHG] emissions across the value chain … consistent with the Paris Agreement's goal of limiting global average temperature increase to well below 2ºC above pre-industrial levels, aiming for 1.5ºC."[60] CA100+ signatories also must press companies in which they own shares to "*implement* transition plans to deliver on robust targets" in line with the recommendations of the Task Force for Climate Related Disclosures (TCFD).[61]

Ceres, which helped found and helps coordinate CA100+, stated that CA100+ signatories "remain committed to the global effort ensuring that 170 of the largest [GHG] emitters take the necessary action on the global climate crisis."[62] Ceres also says that "[i]nvestors and companies alike must do their part to cut [GHG] emissions in half this decade to avoid catastrophic levels of global temperature rise."[63] It is clear from these statements that CA100+ involves coordination in

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[57] *Id.*
[58] *See* BlackRock, *Climate Action 100+ Sign-On Statement" & Letter from BlackRock to Climate Action 100+ Steering Committee*, at 1 (Jan. 6, 2020), https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf (CA100+ sign-on statement, referencing the Paris Agreement and "well below 2 degrees Celsius" goal).
[59] Climate Action 100+, *Climate Action 100+ Announces Its Second Phase* (June 8, 2023), https://www.climateaction100.org/news/climate-action-100-announces-its-second-phase/.
[60] Climate Action 100+, *Climate Action 100+ Phase 2: Summary of Changes* at p. 7 (June 2023), https://www.climateaction100.org/wp-content/uploads/2023/06/CA100-Phase-2-Summary-of-Changes.pdf.
[61] *Id.*
[62] Ceres, *Statement on Climate Action 100+ Investor Departures* (Feb. 22, 2024), https://www.ceres.org/news-center/press-releases/ceres-statement-climate-action-100-investor-departures.
[63] *Id.*

order to force companies—including utility companies—to change operations for the purpose of reducing emissions to hit certain targets that are not a requirement of U.S. law.

The UNPRI commitment includes "Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes" and "Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices."[64]

In February 2024, BlackRock announced that it is limiting involvement with CA100+ to only its international arm and now will pursue net zero goals in engagements and proxy votes only for clients who have expressly asked it to do so.[65] BlackRock also noted that it "owes contractual and fiduciary duties to [its] clients and is subject to various antitrust and competition laws across various jurisdictions."[66] Although BlackRock has reduced its involvement with CA100+, its previous membership is still relevant to whether BlackRock has acted consistently with the terms and conditions of the Commission's prior blanket authorizations. In fact, it appears that Applicants have not even informed the Commission about their involvement or prior involvement with CA100+, UN PRI, or Ceres.

J.P. Morgan Asset Management, State Street Global Advisors, PIMCO, and Invesco have also recently announced their withdrawals from CA100+.[67] Notably, State Street recognized "*potential legal risks*" when leaving CA100+ and stated that Phase 2 is "*not consistent with [State Street's] independent approach to proxy voting and portfolio company engagement*."[68]

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[64] UNPRI, *What are the Principles for Responsible Investment*, https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment.
[65] BlackRock, *Letter to Climate Action 100+ Steering Committee* (Feb. 2, 2024), https://www.blackrock.com/corporate/literature/publication/2024-our-participation-in-climate-action-100.pdf.
[66] *Id.*
[67] Simon Jessop, *Invesco Joins List of US Asset Managers to Exit CA100+ Climate Group*, Reuters (Mar. 1, 2024), https://www.reuters.com/sustainability/invesco-joins-list-us-asset-managers-exit-ca100-climate-group-2024-03-01/.
[68] David Gelles, *More Wall Street Firms Are Flip-Flopping on Climate*, N.Y. Times (Feb. 19, 2024) (emphasis added), https://www.nytimes.com/2024/02/19/business/climate-blackrock-state-street-

2. Net Zero Asset Managers initiative

BlackRock joined NZAM in 2021, and it is still a member today.[69] NZAM is another horizontal association of asset managers that encompasses **$57 trillion** USD in assets under management.[70] NZAM is under the umbrella of the Glasgow Financial Alliance for Net Zero ("GFANZ"), which "is a global coalition of leading financial institutions committed to accelerating the decarbonization of the economy."[71]Signatories to NZAM "commit[] to support the goal of net zero [GHG] . . . emissions by 2050, in line with global efforts to limit warming to 1.5°C."[72] They also commit to:

- "Work in partnership with asset owner clients on decarbonisation goals, *consistent with an ambition to reach net zero emissions by 2050 or sooner across all [AUM]*";
- "Set an interim target for the proportion of assets to be managed in line with the attainment of net zero emissions by 2050 or sooner";
- "Review [their] interim target at least every five years, with a view to *ratcheting up the proportion of AUM covered until 100% of assets are included*"; and
- "*Across all [AUM]* . . . [i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [the] ambition for all [AUM] to achieve net zero emissions by 2050 or sooner."[73]
- "Ensure any relevant direct and indirect policy advocacy [they] undertake is supportive of achieving global net zero emissions by 2050 or sooner."[74]

The NZAM commitment also "sets out a range of actions that asset managers will take forward which are the key components required to accelerate the transition to net zero and achieve

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jpmorgan-pimco.html; Patrick Temple-West and Brooke Masters, *JPMorgan and State Street Quit Climate Group as BlackRock Scales Back*, Financial Times (Feb. 15, 2024), https://www.ft.com/content/3ce06a6f-f0e3-4f70-a078-82a6c265ddc2.

[69] https://www.netzeroassetmanagers.org/signatories/blackrock/.

[70] NZAM, *The Net Zero Asset Managers Initiative*, https://www.netzeroassetmanagers.org/.

[71] GFANZ, https://www.gfanzero.com/.

[72] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/.

[73] *Id.* (emphasis added).

[74] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/media/2021/12/NZAM-Commitment.pdf.

emissions reductions in the real economy: Engaging with clients, setting targets for assets managed in line with net zero pathways, corporate engagement and stewardship, [and] policy advocacy."[75] It further "ensures that several important actions – such as stewardship and policy advocacy – are comprehensively implemented."[76] All of these commitments make clear that NZAM, like CA100+, involves coordination by owners of shares in target companies in order to force such companies to reduce emissions by setting targets that are not a requirement of U.S. law.

BlackRock's membership in NZAM appears to be inconsistent with its representation that it is a "passive" investor in public utilities. As the States previously explained in a motion addressing Vanguard's request to renew its most recent blanket authorization in November 2022,[77] Vanguard's prior net zero commitments necessarily meant that it was "abandon[ing] its status as a passive investor in public utilities and adopt[ing] a motive consistent with managing the utility."[78] Further, such commitments suggested that "Vanguard ha[d] already undertaken . . . corresponding activities that may constitute attempts to manage utilities—the precise actions Vanguard represented . . . that it would not take."[79] The States further argued that "in joining NZAM and Ceres, Vanguard ha[d] engaged (and promise[d] to continue to engage) in organizations that coordinate conduct with other major financial institutions, including BlackRock and State Street, to impose net-zero requirements on publicly traded utilities. This group effort to control day-to-day operations of public utilities raises serious concerns about the continuing efficacy of the 10%

[75] NZAM, *FAQ*, https://www.netzeroassetmanagers.org/faq/.
[76] *Id.*
[77] *In re The Vanguard Group, Inc. et al*., Docket No. EC19-57-001; EC-57-002.
[78] Motion to Intervene and Protest by the States and Attorneys General of Utah et al., at 11–12, *In re The Vanguard Group, Inc. et al*., Docket No. EC19-57-001; EC-57-002 (filed 11/28/2022).
[79] Motion to Intervene and Protest by the States and Attorneys General of Utah et al. at 11–12, *In re The Vanguard Group, Inc. et al*., Docket No. EC19-57-001; EC-57-002 (filed 11/28/2022).

and 20% ownership limits imposed by" Vanguard's prior blanket authorization.[80] Those same arguments are applicable to BlackRock today.

Shortly after the States' motion, Vanguard withdrew from NZAM. Vanguard's CEO commented: "*We don't believe that we should dictate company strategy*."[81] He also said: "*It would be hubris to presume that we know the right strategy for the thousands of companies that Vanguard invests with*. We just want to make sure that risks are being appropriately disclosed and that every company is playing by the rules."[82] He further stated: "We cannot state that ESG investing is better performance wise than broad index-based investing . . . . Our research indicates that ESG investing does not have any advantage over broad-based investing."[83]

3. Examples of pressure campaigns

One example of the pressure campaign involves PacifiCorp, which serves Utah and other states. In 2021, the California Public Employees Retirement System (CalPERS) introduced a shareholder proposal for Berkshire Hathaway, Inc., PacifiCorp's ultimate owner, relating to so-called "climate risks." It sought "[a]n examination of the feasibility of the Company establishing science-based, [GHG] reduction targets, consistent with limiting climate change to well-below 2ºC."[84] BlackRock, noted "that the company 'is not adapting to a world where environmental, social, governance (ESG) considerations are becoming much more material to performance,'" and this dissatisfaction "prompted other institutional investors to express their discontent, increasing

[80] *Id.* at 14.
[81] Chris Flood et al., *Vanguard Chief Defends Decision to Pull Asset Manager Out of Climate Alliance*, Financial Times (Feb. 20, 2023) (emphasis added), https://www.ft.com/content/9dab65dd-64c8-40c0-ae6e-fac4689dcc77.
[82] *Id.* (emphasis added).
[83] *Id.*
[84] Berkshire Hathaway Inc., *Schedule 14A* at page 11 (March 15, 2021), https://www.sec.gov/Archives/edgar/data/1067983/000119312521080418/d938053ddef14a.htm

pressure on the company to modify its approach."[85] Berkshire Hathaway is a Climate Action 100+ (CA100+) focus company, meaning it is one of the 170 companies that CA100+ is targeting for activist pressure.[86] And at the time of this proposal, BlackRock and CalPERS were both CA100+ members. While the shareholder proposal did not pass, PacifiCorp nonetheless acted consistent with this investor pressure by accelerating closure target dates of two coal plants, Huntington and Hunter, from 2036 and 2042 to 2032.[87] Two other coal plants are expected to stop burning coal before 2030.[88] PacifiCorp may have multiple reasons for the closures, but responding to coordinated pressure by asset managers and other owners is not a legitimate one. Consumers will be harmed if their costs go up or reliability decreases because of early closures based on activist pressure campaigns.

Another example of coordinated pressure involves American Electric Power Co., Inc. ("AEP"), which serves customers in Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.[89] AEP is a CA100+ focus company.[90] AEP reports that it has a strategy to achieve "net zero carbon dioxide emissions by 2045, with an

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[85] Jason Halper *et al.*, *Investors and Regulators Turning up the Heat on Climate-Change Disclosures* (Oct. 4, 2021), https://corpgov.law.harvard.edu/2021/10/04/investors-and-regulators-turning-up-the-heat-on-climate-change-disclosures/ (citing Dawn Lim and Geoffrey Rogow, *BlackRock at Odds With Warren Buffett's Berkshire Hathaway Over Disclosures*, Wall St. J., May 6, 2021, https://www.wsj.com/articles/blackrock-at-odds-with-warren-buffetts-berkshire-hathaway-over-disclosures-11620306010).

[86] Climate Action 100+, *Company Assessment: Berkshire Hathaway*, https://www.climateaction100.org/company/berkshire-hathaway/.

[87] Robert Gehrke and Tim Fitzpatrick, *Why is Rocky Mountain Power closing its Utah coal plants? Here's what we know*, The Salt Lake Tribune (Mar. 31, 2023), https://www.sltrib.com/news/2023/03/31/why-is-rocky-mountain-power/.

[88] Tim Fitzpatrick et al., *End of Utah coal power in sight as Rocky Mountain Power moves to renewables and nuclear*, The Salt Lake Tribune (Apr. 4, 2023), https://www.sltrib.com/renewable-energy/2023/03/31/end-utah-coal-power-sight-rocky/.

[89] American Electric Power, *Facts*, https://www.aep.com/about/facts.

[90] Climate Action 100+, *Company Assessment: American Electric Power Company*, https://www.climateaction100.org/company/american-electric-power-company-inc/.

interim goal to cut emissions 80% from 2005 levels by 2030."[91] Moreover, AEP reports that it intends to cut its percentage of electricity generation from coal from 42% to 17% by 2033 and increase its percentage of generation from hydro, wind, solar, and pumped storage from 21% to 50% during the same time period.[92] However, CA100+ has graded AEP in every top-level category other than 2050 ambition as not meeting or only partially meeting its criteria.[93] This includes because AEP's target is not "aligned with the goal of limiting global warming to 1.5°C," the company has not set short term targets, and the company's targets do not include scope 3 emissions.[94] This shows the prescriptive nature of CA100+'s demands. Consumers will be required to pay for any increased costs from alternative sources of energy and suffer the consequences of any loss of reliability in their power supply.

A third example is Ameren Corporation, which operates in Missouri and has several natural gas or oil-fired facilities.[95] In 2023, Ameren made a commitment to As You Sow in return for withdrawal of a shareholder proposal seeking to compel the company's board to "issue short and long-term targets aligned with the Paris Agreement's 1.5ºC goal requiring Net Zero emissions by 2050 for the full range of its Scope 3 value chain GHG emissions."[96] Ameren is a CA100+ focus company.[97] As You Sow is a CA100+ "engagement service provider," which means that it is one

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91 American Electric Power, *Clean Energy Future*, https://www.aep.com/about/ourstory/cleanenergy.

92 American Electric Power, *Generation*, https://www.aep.com/about/businesses/generation.

93 Climate Action 100+, *Company Assessment: American Electric Power Company*, https://www.climateaction100.org/company/american-electric-power-company-inc/.

94 *Id*.

95 Ameren, *About Ameren*, https://www.ameren.com/company/about-ameren; Ameren, *Ameren Missouri Facts* (Apr. 2023), https://www.ameren.com/-/media/missouri-site/files/aboutus/amerenmissourifactsheet.ashx.

96 *Adopt Scope 3 GHG targets (1.5C aligned) (AEE, 2023 Resolution)*, https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l5c00000Vt8DBAAZ.

97 Climate Action 100+, *Companies*, https://www.climateaction100.org/whos-involved/companies/.

of the entities that coordinates with asset managers to push shareholder proposals, and it has reported that in 2021 alone it was able to extract agreements from multiple utilities.[98] In December 2023, after reaching agreement with As You Sow, Ameren Missouri released its Task Force on Climate Related Disclosure (TCFD) Report, in which it committed to "metrics and targets for reaching our 2045 net-zero carbon emissions goal."[99] It appears that this 2023 report accelerated the emissions targets for 2030, 2040, and 2045 compared to Ameren's 2022 report.[100] The shareholder proposal filed by As You Sow, which Ameren agreed to resolve in return for withdrawal, thus could electricity costs for consumers.

C. BlackRock's actions are consistent with its commitments to influence companies to adopt and implement net zero targets.

Contrary to its representations to the Commission in its reauthorization and authorization applications over the past 13 years, it appears that BlackRock has not acted as a "passive, non-controlling investor" as to its own shares.[101] For one thing, BlackRock's "passive investor" representations appear to be inconsistent with BlackRock's own public statements confirming that it manages assets in order to push companies to adopt BlackRock's climate agenda. For example, in his 2020 letter to CEOs—including CEOs of publicly traded utility companies—BlackRock CEO Larry Fink said that he "believe[s] we are on the edge of a fundamental reshaping of

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[98] Climate Action 100+, *Investor Signatories*, https://www.climateaction100.org/whos-involved/investors/?search_investors=&investor_type=engagement-service-provider; *see also* As You Sow, 2021 Shareholder Impact Review: Changing Corporations for Good, https://www.asyousow.org/2021-shareholder-impact-review.

[99] Ameren, *Powering a Reliable, Sustainable Tomorrow* at 2, *https://www.ameren.com/-/media/corporate-site/files/environment/reports/climate-report-tcfd.pdf*.

[100] *Compare id.* at page 10 (bar chart showing percentage reductions for certain years, reducing to "net-zero" in 2045), *with* Ameren, *2022 Ameren Corporate Sustainability Report* at 18 (chart showing "Projected Carbon Intensity," that does not reach 0 until 2050; moreover the rate of decrease appears to be somewhat slower when compared to the 2023 chart), https://s21.q4cdn.com/448935352/files/doc_downloads/2022/2022_Ameren_Sustainability_Report.pdf.

[101] *See* 2022 BlackRock Application at 10; *see also id.* at 11–12 ("the interests acquired by the Applicants would be passive").

finance."[102] Mr. Fink said that BlackRock would be "increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures **and** the business practices and plans underlying them."[103] Mr. Fink's 2021 letter to clients stated, "[l]ast year we wrote to you that BlackRock was making sustainability our new standard for investing."[104] He also stated that BlackRock is "explicitly asking that all companies disclose a business plan aligned with the goal of limiting global warming to well below 2ºC, consistent with achieving net zero global greenhouse gas emissions by 2050."[105] And BlackRock has also specifically urged portfolio companies to disclose targets that "[c]onsistent with the TCFD . . . including a scenario in which global warming is limited to well below 2°C, and considering global ambitions to achieve a limit of 1.5°C."[106] None of these statements and actions appear to be consistent with BlackRock's representations that it is a "passive, non-controlling investor."

BlackRock's "passive investor" representations are also in apparent conflict with internal emails from climate the climate-activist group Ceres, which indicated that BlackRock's "large asset owner[]" clients were exerting coordinated pressure to force BlackRock to "step up [its] climate ambition."[107] BlackRock claimed in a public letter to the CA100+ Global Steering Committee that its proxy voting would continue to be dictated by its fiduciary duties,[108] but it apparently provided private reassurances, as that same committee's minutes noted that "BlackRock

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[102] https://corpgov.law.harvard.edu/2020/01/16/a-fundamental-reshaping-of-finance/.
[103] *Id.* at 5 (emphasis added).
[104] https://www.blackrock.com/corporate/investor-relations/2021-blackrock-client-letter.
[105] *Id.*
[106] https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf.
[107] CERES0027685 (p. 480), available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf.
[108] BlackRock, *Letter from BlackRock to Climate Action 100+ Steering Committee* (Jan. 6, 2020), https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf.

understands that by joining CA100+, it is expected to shift its voting to support climate resolutions."[109] Another email from Ceres warned that BlackRock could suffer "billions of dollars in lost revenue" if it did not "*dramatically change*" its proxy voting by increasing its support for climate proposals.[110] After committing to climate initiatives like NZAM, BlackRock did indeed "dramatically change" its voting patterns by shifting its support toward supporting net zero resolutions.[111]

To illustrate this dramatic shift: In the 2019-20 proxy season, BlackRock voted for only about 6% of environmental proposals, and it voted against only 55 directors on climate-related issues.[112] But in the 2020-21 proxy season—after joining climate initiatives like NZAM—BlackRock voted for **64%** of environmental proposals, and it voted against **255** directors on climate-related issues.[113] Together with its proxy votes, BlackRock's shareholder engagements also shifted heavily toward advancing environmental goals following BlackRock's climate commitments to NZAM. In fact, BlackRock's climate engagements nearly doubled between the 2019-20 and the 2020-21 proxy seasons; they went from being BlackRock's third-most-common engagement topic to its most-common engagement topic.[114] And from July 1, 2022, through June

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[109] Climate Action 100+, *Climate Action 100+ Steering Committee Meeting Minutes* (March 26, 2020), CERES001260, available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf (p. 460) (emphasis added).
[110] CERES0014474 (p. 486) (emphasis added), available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf.
[111] https://corpgov.law.harvard.edu/2021/08/16/blackrock-flexes-its-muscles-during-the-2020-21-proxy-period/.
[112] https://web.archive.org/web/20201102062130/https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf at 13, 17.
[113] https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf at 14–15.
[114] *Compare* https://web.archive.org/web/20201102062130/https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf at 13 (1,260 engagements on "environmental risks and opportunities"), *with* https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf at 8 (2,330 engagements on "climate and natural capital").

30, 2024, BlackRock held over **2,900** engagements behind closed doors with companies on the issue of "climate and natural capital."[115] BlackRock's corporate materials do not specify the precise nature or results of such engagements, which include off-the-record conversations and closed-door meetings in which BlackRock communicates its environmental prerogatives. However, the Ceres Investor Network recently boasted that its investors (of which BlackRock is the largest) had reached a "[r]ecord number of negotiated agreements" in exchange for resolution withdrawals, including agreements by electric utilities "to set targets for reducing Scope 3 greenhouse gas emissions."[116]

BlackRock's engagement strategies are likely successful because companies know that BlackRock has voted, and will continue to vote, its massive shareholdings against companies for failure to align with certain environmental objectives. In the 2020-21 proxy season, BlackRock took voting action against seven utility companies "for lack of progress on climate."[117] Some of these voting actions were directed at American utility companies including Allete, Inc., the Atlantic Power Corporation, and the National Fuel Gas Company.[118] Although BlackRock does not always divulge the reasons behind its votes with respect to American companies, it loudly broadcasts the use of its voting power to punish utilities generally. For example, BlackRock voted against the

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[115] https://www.blackrock.com/corporate/literature/publication/2024-investment-stewardship-voting-spotlight.pdf at 17; https://web.archive.org/web/20240416232955/https://www.blackrock.com/corporate/literature/publication/2023-investment-stewardship-voting-spotlight.pdf at 3, 51.

[116] Ceres, *Record Number of Negotiated Agreements Between Investors and Companies in 2022 Proxy Season* (Aug. 1, 2022), available at https://www.ceres.org/news-center/press-releases/record-number-negotiated-agreements-between-investors-and-companies-2022.

[117] BlackRock, *Our Approach to Sustainability* 27, available at https://www.blackrock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerate&stream=top.

[118] *Id.*

board of a Korean utility to "hold[] them accountable for the decision to proceed with investing in a coal-fired power plant project in Indonesia."[119]

There are many other examples of BlackRock's exercise of influence and control over utilities.[120] For instance, in 2021, BlackRock voted against the Chairman of the Board for FirstEnergy, an Ohio-based electric utility that is a CA100+ focus company, because the company "does not have a rigorous net zero strategy."[121] BlackRock also voted in 2021 against a director for Dominion Energy—another CA100+ focus company—because the company did not meet BlackRock's "expectations of having adequate climate risk disclosures against all 4 pillars of TCFD at this time, including Scope 3 disclosures."[122] In light of these actions, it appears that BlackRock is using corporate-engagement strategies to pressure utilities to conform their business operations to align with BlackRock's net zero goals.

D. The Reauthorization must include meaningful passivity requirements for BlackRock, its affiliates, and membership groups

In the Commission's 2016 BlackRock Order, the Commission required that, when filing a Schedule 13D, Applicants would not:

- Seek board representation or the power to name a board member of such Utility;
- Seek to nominate or designate managerial, operational or other personnel of the Utility;
- Seek to set or influence the price at which power, fuel or any other product is sold or purchased by the Utility in the marketplace;
- Seek to determine or influence whether generation, transmission, distribution or other physical assets of the Utility are made available or

[119] BlackRock, *Our 2021 Stewardship Expectations* 19, available at https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf.
[120] *See, e.g.*, Motion to Intervene and Motion for Relief Regarding BlackRock's Blanket Authorizations, *In re BlackRock, Inc.*, Docket No. EC16-77-002 (filed May 10, 2023), at 26–30, 61–62.
[121] Proxy Vote Disclosure (issproxy.com) (search for FirstEnergy).
[122] Proxy Vote Disclosure (issproxy.com) (search for Dominion Energy).

withheld from the marketplace;

- Seek to determine or influence ratemaking or rates for the sale of power or the provision of transmission or distribution service by the Utility;

- Seek to determine or influence wages to be paid to labor or participate in or influence labor negotiations of the Utility; or

- Seek to participate in or influence any other operational decision of the Utility.[123]

These requirements should be carried forward into any reauthorization and apply to Applicants regardless of whether they file a Schedule 13G or 13D for a FPA-covered utility. In fact, in 2022, the Commission specifically relied on the fact that Applicants had "provided assurances sufficient to demonstrate that they will not be able to influence control over U.S. Traded Utilities."[124] Nevertheless, BlackRock has used proxy votes and shareholder engagements to pressure FPA-covered utilities to reduce their GHG emissions and drastically modify their operations. In doing so, BlackRock has exercised influence and control over those utilities.

The Commission must ensure that BlackRock is adhering to the limitations on "influence," regardless of whether BlackRock is filing a Schedule 13G or 13D disclosure for a particular U.S. Traded Utility. If BlackRock returns to functioning as a passive owner and withdraws from CA100+, NZAM, and other associations seeking to influence control of FPA-covered utilities, it may properly continue acquiring shares within the limits established by the Commission. Absent those corrective actions, it must not be permitted to acquire or hold additional shares in violation of § 824b(a)(2). That includes shares in Global Infrastructure Management, LLC.[125]

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[123] *BlackRock, Inc. & Its Affiliated Inv. Mgmt. Companies & Applicant Funds*, 155 FERC ¶ 62,051, 2016 WL 1611067, at *2 (2016).
[124] 2022 BlackRock Order at 19; *see also* Request at 6.
[125] *See* Request at 10 (citing *Global Infrastructure Management, LLC, et. al.*, 188 FERC ¶ 61,166 (Sept. 6, 2024)).

The Commission's requirement of these passivity requirements would be consistent with the Commission's own precedent. Most relevant, BlackRock made these exact commitments to the Commission for its 2016 reauthorization, which carry forward today. But these commitments must apply to both Schedule 13G and 13D filings. As another example, in *Franklin Resources*, the applicants were required to commit "not to engage in certain specified activities that could lead to the exercise of control over the management or affairs of a U.S. Traded Utility."[126] And in *Entegra Power Group*, the Commission rejected the argument that a "21 percent" ownership was insufficient to influence control of a utility.[127] Indeed, "[t]he Commission has rejected the notion that mere minority ownership is insufficient to exert a degree of control sufficient to require authorization under section 203."[128] The Commission thus placed limits on the applicants, including by prohibiting them from "cast[ing] any votes or tak[ing] any action that directly or indirectly dictates the price at which power is sold from Entegra's generating facilities, or directly or indirectly specifies how and when power generated by the facilities will be sold."[129] These types of commitments are critical to carrying out the FPA's competition and consumer-protection purposes.

III. Applicants must hold utility shares subject to their fiduciary duties to their investors.

For each association or organized group (together with its asset managers) that constitutes a holding company under the FPA, FERC should require a commitment to operate consistent with the traditional fiduciary duties applicable to asset managers. As former Commissioner Christie recognized, there is a clear—and unacceptable—potential for conflicts when asset managers "appear to be acting not as passive investors simply seeking the best risk-based returns for their

[126] *Franklin Res., Inc.*, 127 FERC ¶ 61,224 at P 8.
[127] *See Entegra Power Grp. LLC*, 125 FERC ¶ 61,143, 61,718 ¶ 33 (2008).
[128] *Id.*
[129] *Id.* at 61,722 ¶ 40 (F).

clients but instead appear to be *actively* using their investment power to affect how the utility meets its own public service obligations."[130]

The duty to invest "solely in the interests" of a beneficiary incorporates trust law principles, which prohibit a fiduciary from having motives other than the beneficiary's financial interests.[131] In other words: "The trustee . . . is under a duty to the beneficiary in administering the trust not to be guided by the interest of any third person. Acting with mixed motives triggers an irrebuttable presumption of wrongdoing, full stop."[132] Thus, in managing the investments of a trust, "the trustee's decisions ordinarily must not be motivated by a purpose of advancing or expressing the trustee's personal views concerning social or political issues or causes," except as expressly authorized by the terms of the trust or consent of the beneficiaries, or in some charitable contexts.[133] Further, the "IAA creates a fiduciary duty on the part of investment advisers to exercise good faith and fully and fairly disclose all material facts to their clients, and an affirmative obligation "to employ reasonable care to avoid misleading [their] clients."[134]

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[130] 88 Fed. Reg. 88904.

[131] *See*, *e.g.*, 29 U.S.C. § 1104 (sole-interest ERISA standard); *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996) (noting that "the law of trusts will often inform . . . an effort to interpret ERISA's fiduciary duties," though it may not always be determinative).

[132] Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 Stan. L. Rev. 381, 400–401 (2020) (citations and quotations omitted).

[133] Restatement (Third) of Trusts, § 90, cmt. c; *see also* Uniform Prudent Investor Act § 5 cmt. (1994) ("No form of so-called 'social investing' is consistent with the duty of loyalty if the investment activity entails sacrificing the interests of trust beneficiaries—for example, by accepting below-market returns—in favor of the interests of the persons supposedly benefitted by pursuing the particular social cause."); Richard A. Posner & John H. Langbein, *Social Investing and the Law of Trusts*, 79 MICH. L. REV. 72, 96 (1980) ("It remains to consider whether social investing is contrary to trust law and its statutory counterparts. We conclude that it is . . . .").

[134] *Morris v. Wachovia Sec., Inc.*, 277 F. Supp. 2d 622, 644 (E.D. Va. 2003) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)); *see also Malouf v. SEC*, 933 F.3d 1248, 1265 (10th Cir. 2019) ("The Act prohibits investment advisers from engaging in a fraudulent or deceptive transaction, practice, or course of business. Investment Advisers Act, 15 U.S.C. § 80b–6(2). This prohibition imposes a fiduciary duty of loyalty on investment advisors . . . ."); *Goldstein v. SEC*, 451 F.3d 873, 881 (D.C. Cir. 2006).

BlackRock has joined membership organization that have commitments to managing assets in the interest of advancing environmental and ideological goals rather than in the sole financial interest of investors. For example, an NZAM member must , "play [its] part to help deliver the goals of the Paris Agreement" by "accelerat[ing] the transition towards global net zero emissions" and by phasing out fossil fuels.[135] Further, BlackRock has committed to "[i]mplement a stewardship and engagement strategy, with a *clear escalation and voting policy*, that is consistent with [the] ambition for *all assets under management* to achieve net zero emissions by 2050 or sooner."[136] Notably, BlackRock's commitments to achieve net zero are not conditioned upon such an outcome maximizing risk-adjusted return for a company. No provision is made for the possibility that some companies might benefit from generating as much cash flow as possible before net zero requirements are imposed, or from attempting to delay net zero requirements from being implemented. Similarly, BlackRock has used proxy votes and shareholder engagements to pressure utilities to implement the climate commitments that BlackRock has made to third-party organizations. These actions implicate the fiduciary duty to manage client assets in the "sole" interest of the assets' beneficial owners.

When reviewing Applicants' pending Request, the Commission should hold an evidentiary hearing to determine whether BlackRock is in compliance with its obligation to hold utility shares subject to its fiduciary duties to investors, including the duty to act in investors' sole financial interest.

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[135] NZAM, Signatory Disclosure, https://www.netzeroassetmanagers.org/signatories/blackrock/; NZAM, *Commitment*, https://www.netzeroassetmanagers.org/media/2021/12/NZAM-Commitment.pdf; NZAM, *Network Partners' Expectation of Signatories With Regard to Fossil Fuel Investment Policy*, https://www.netzeroassetmanagers.org/media/2021/12/NZAM-Network-Partners-Fossil-Fuel-Position.pdf.

[136] *See* NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/ (emphasis added).

IV. Going forward, the Commission must require Applicants to provide specific reports in order to ensure Applicants' compliance with the conditions of blanket authorization.

To ensure that Applicants comply with the essential requirements of their blanket authorization, the Commission should require Applicants to: report on every instance in which an asset manager voted contrary to the recommendation of utility management on a shareholder proposal or board-of-director nomination; provide an explanation on how any such votes were consistent with the asset manager's commitments to FERC; and report on all engagements with FPA-covered utilities.

V. This docket should be consolidated with the existing docket.

A final note: The Commission should consolidate its actions on this docket, EC25-12, with the existing docket relating to Applicants' prior authorizations under Section 203, EC16-77. Since 2016, BlackRock has filed its requests for blanket authorization in EC16-77, including in 2019 and 2022. Additionally, there is a pending Motion to Intervene and Motion for Relief by seventeen states filed on May 10, 2023 in the EC16-77. The Commission has not yet ruled on that pending motion, but Chair Phillips described it as a "contested proceeding." *See* 8/15/2023 Letter filed in EC16-77. BlackRock appears to be attempting to avoid the fact that the States' Motion in EC16-77 has now been pending for over eighteen months (half the duration of the blanket authorization) by filing its new request in an entirely new docket. This is improper, and the Commission should consider all pending filings in EC16-77 as part of considering Applicants' new request in EC25-12.

CONCLUSION

The Commission must not approve BlackRock's application unless the Commission 1) requires all of the requirements discussed in this protest as a condition of the blanket

authorization; 2) conducts an evidentiary hearing or other sufficient process to determine that Applicants are in fact in compliance with the following requirements (except the new recordkeeping requirement) prior to granting any reauthorization; and 3) makes ongoing compliance with these requirements subject to meaningful periodic reporting requirements and the Commission's supplemental order authority under Sections 203(b) and 309 of the FPA.

Dated: November 12, 2024 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated: November 12, 2024.

/s/ Stanford Purser