**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|---|
| Federal Power Act Section 203 Blanket Authorizations for Investment Companies | ) ) | AD24-6-000 |

**COMMENTS OF THE AMERICAN COUNCIL ON RENEWABLE ENERGY**

The American Council on Renewable Energy ("ACORE"), a national nonprofit organization dedicated to advancing the critical importance of renewable energy and advocating for the market structures, policies and financial innovations designed to advance renewable energy deployment, hereby submits these comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") *Notice of Inquiry* ("Notice") issued on December 19, 2023 in the above-captioned docket.

## I. OVERVIEW

ACORE requests that the Commission not revise its policy for granting blanket authorizations for investment company acquisitions of securities of public utilities, both under the specific situations defined in Order 669 and on a case-specific basis.

As stated in the Notice, the Commission must "make sure that its blanket authorization policy is consistent with the public interest."[1] But the Commission offers no evidence that the current policy does not meet the public interest standard. Instead, the opposite is true as altering this policy creates a risk of impeding financial investment in much needed energy infrastructure. Moreover, much of the rationale for this Notice appears to be based only on speculative concerns that are outside the scope of the public interest consideration, as described in these comments.

[1] Notice at P 8.

In its *Order Extending Blanket Authorization to Acquire Securities* for BlackRock, Inc.[2] the Commission explains how it complies with the standards contained in the Federal Power Act (FPA) regarding proposed securities transactions as follows:

> FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.[11] The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[12] FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[13]
>
> [11]16 U.S.C. § 824b(a)(4).
>
> [12] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.
>
> [13]16 U.S.C. § 824b(a)(4).

As discussed further below, the Commission has not demonstrated that such factors are being adversely impacted by its policy.

## II. RESPONSES TO QUESTIONS

ACORE is responding to broadly to the following questions:

> Q1) Please describe whether the Commission's current blanket authorization policy, as set forth in the Commission's regulations or on a case-specific basis, is sufficient to ensure that holding companies, including investment companies, lack the ability to control the public utilities and holding companies whose securities they acquire and that the transactions underlying the blanket authorization are consistent with the public interest.
>
> Q8) How can the Commission effectively evaluate the influence and control exerted by holding companies, including investment companies, regardless of their size, over public utilities when considering blanket authorizations under section 203(a)(2)? What factors should be prioritized to ensure a fair and comprehensive assessment while maintaining a

[2] 179 FERC ¶ 61,049 (April 22, 2022) at 6.

straightforward and equitable process for all holding companies, including investment companies?

In describing one primary impetus for the Notice, Commission explains that since the regulations for blanket authorizations were promulgated in Order 669, there have "been changes in public utility, finance, and banking industries that warrant consideration of whether the Commission's blanket authorization policy continues to work as intended."[3] Along with utility consolidation, another notable industry change referenced by the Commission is the growth of index funds and their increasing share of public stock ownership – although the Notice does not provide such data separately for stock ownership in public utilities.[4]

When discussing whether to retain the blanket authorization, the Commission does not undertake a reasoned consideration of how and whether such stock ownership changes may impact the aforementioned public interest considerations – the effects on competition, rates, and regulation and the existence of a cross subsidy. Instead, the implications of such expanded investment ownership of public utility securities are addressed only through speculation and conjecture and cites to sources broadly deriding investments in lower emission generation resources. For example, the Commission states vaguely that "some have argued that the largest index funds have used their ownership stakes to pressure utilities to meet particular public policy goals, despite committing to not exercise control over the utilities."[5] The two citations in support of that statement are: a protest by the Consumers Research, Inc. of The Vanguard Group, Inc.'s request for a blanket authorization;[6] and an article by Eric Chaffee in the Case Western Reserve

[3] Notice at P 8.

[4] Notice at P 11, pointing out that the "three largest index fund investment companies currently vote over 20% of the stock in the largest U.S. public companies, a number that may soon rise to 40%."

[5] Notice at P 11.

[6] *Consumers' Research, Inc. Motion to Intervene and Protest*, The Vanguard Group, Inc., et al., Docket

Law Review[7] that makes no mention of either utilities or energy policy and focuses instead on whether a new taxonomy is needed for investors to understand the goals of certain index funds.

The unsigned Consumers Research protest is an inappropriate citation for this Notice as it contains many unsubstantiated and hyperbolic claims, such as that: "Vanguard's desire for a global transition to net zero carbon emissions necessarily involves throttling investment in new oil, gas, and coal production, i.e., the backbone of the U.S. energy industry,"[8] and that "spending billions on green 'initiatives' increases the cost of energy production and diverts resources away from research and development that could benefit consumers down the line."[9] Yet, Consumers Research, which the *Washington Post* refers to as a "dark-money group" that has not revealed its donors,[10] offers no evidence to support these claims other than a single study showing energy price differences between states with and without a Renewable Portfolio Standard[11] – a highly suspect methodology given that price differences may be influenced by multiple variables.

Commissioner Christie also unfortunately reaches unsubstantiated conclusions in his concurrence that are unrelated to the public interest determination for securities transactions. In particular, he asserts that "huge asset managers" are "pushing policy decisions that should be left to elected legislators."[12] Commissioner Christie further states that: "I have pointed out the

---

No. EC19-57-001, 002 (Nov. 28, 2022). Footnotes removed.

[7] Eric C. Chaffee, Index Funds & ESG Hypocrisy, 71 CASE W. RES. L. REV. 1295, 1298-1299 (2021).

[8] Consumers' Research, Inc. at 6.

[9] *Ibid.*

[10] *This group is sharpening the GOP attack on 'woke' Wall Street*, by Steven Mufson, The Washington Post, (Jan. 30, 2023), https://www.washingtonpost.com/climate-environment/2023/01/30/climate-change-sustainable-investing/

[11] Consumers' Research, Inc. at 7, Footnote 22.

[12] Commissioner Christie Concurrence at P 3.

reliability problems that will result from premature dispatchable generation retirements that may come from these initiatives. Decisions on the appropriate generation resources mix for a public utility with a state-granted franchise are policy decisions for state policymakers, not huge Wall Street asset managers."[13]

Neither Consumers Research nor Commissioner Christie offer evidence about how utilities are "pressured" by index funds or whether any decisions about the generation mix are adversely impacting reliability or consumer costs. Many financial institutions pursue investments in renewable energy for myriad reasons that are financially material – including the declining costs of such resources[14] and because these investments compare favorably to other financial products in risk and return profiles.[15]

Numerous investor-owned utilities have also established clean energy goals of their own. The Edison Electric Institute (EEI) reports that many investor-owned utilities have undertaken commitments to cleaner energy portfolios, stating that: "50 EEI member companies already have announced ambitious emissions reduction commitments, 41 of which aim for net-zero or equivalent by 2050 or sooner."[16] EEI also notes that member companies are moving to cleaner sources while continuing to prioritize reliability and affordability. Moreover, as Commissioner

[13] *Ibid.* Footnote removed.

[14] *Lazard's Levelized Cost of Energy Analysis—Version 16.0*, (April 2023) showing that utility-scale renewable energy technologies are competitive with conventional technologies on an unsubsidized basis (see chart on p. 3). This cost comparison holds in certain regions even where the cost of firming intermittency is included (see chart on p. 8). https://www.lazard.com/research-insights/2023-levelized-cost-of-energyplus/.

[15] American Council on Renewable Energy, *The Risk Profile of Renewable Energy Tax Equity Investments* (December 2023), at 7 stating that: "Renewable energy projects typically have a high level of contracted revenue, limited variable operating costs, and relatively predictable cash flows." https://acore.org/wp-content/uploads/2023/12/ACORE-The-Risk-Profile-of-Renewable-Energy-Tax-Equity-Investments-1.pdf.

[16] See https://www.eei.org/issues-and-policy/clean-energy.

Christie notes, investor-owned utilities are regulated by their state public service commissions and therefore, subject to reliability obligations and rate regulations, which cannot be overridden by "asset managers pushing policy decisions."

## III. CONCLUSION

ACORE urges the Commission to retain the current blanket authorization policy. Further we ask that any future Commission actions on this matter are both rooted in the established public interest standard and have a factual basis.

Respectfully submitted,

*/s/ Elise Caplan*
Elise Caplan
Vice President, Regulatory Affairs
American Council on Renewable Energy
1150 Connecticut Ave NW, Suite 401
Washington, D.C. 20036
caplan@acore.org

Dated: March 26, 2024