June 23, 2023

The Honorable Willie L. Phillips
Chairman

The Honorable James Danly
Commissioner

The Honorable Mark C. Christie
Commissioner

The Honorable Allison Clements
Commissioner

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman Phillips and Commissioners:

BlackRock, the world's largest asset manager, appears to be systematically violating its commitments to the Federal Energy Regulatory Commission (the "Commission"). Blackrock committed to be a passive investor, yet is attempting replace directors and otherwise change utility operations to retire fossil fuels to meet net zero greenhouse gas emissions targets. The Commission should investigate BlackRock's actions, as well as those of Climate Action 100+ ("CA100+") and the Net Zero Asset Managers Initiative ("NZAM").

For over a decade, the Commission has given BlackRock "blanket authorizations" under Section 203(a)(2) of the Federal Power Act ("FPA")[1] to amass voting securities of American utility companies. This began after BlackRock acquired certain entities from Barclays Bank PLC in 2009.[2] The Commission's blanket authorizations were provided with strict limits such as a 20% ownership ceiling and the requirement that BlackRock hold stock as a passive investor that does not attempt to influence utility company operations. BlackRock, in fact, proposed these limits.

BlackRock, however, appears to have fundamentally departed from its promises. After joining CA100+ in 2000, BlackRock used its holdings to force its climate agenda on American utility companies. BlackRock's partnering with other activist asset managers through CA100+ and NZAM, appears to fundamentally conflict with its promise to keep its share percentage within certain limits. The members of these organizations involve combined shares that exceed the Commission's ownership limit of 20%. The members of these organizations leverage the

[1] 16 U.S.C. § 824b(a)(2).
[2] BlackRock, Inc., 131 FERC ¶ 61,063, at P 4 (2010).

extraordinary power of their combined shares to pressure American utility companies in "engagements" behind closed doors. If company management does not cooperate with demands made in the "engagements," BlackRock actively uses its shares to vote against those directors. For example, BlackRock voted in 2021 against directors at two American utility companies for not having a "rigorous net zero strategy" or not establishing and issuing scope 3 emissions[3] targets and performance metrics.[4]

The Commission retains authority under its blanket authorizations to audit and to issue supplemental orders under FPA Sections 203(b) and 309.[5] It must now exercise that authority, as BlackRock's representations about being a "passive investor" within specified limits appear to be false or incomplete.[6] Below we outline the facts and several questions relevant to our inquiry. Please respond as soon as possible, but no later than August 11.

Background

The Commission's Blanket Authorizations to BlackRock

In 2010, the Commission granted BlackRock's request for a three-year blanket authorization under Section 203 of the FPA to acquire substantial ownership of voting securities in utility companies even though it was a "holding company" of three utilities, and it would otherwise be limited to $10M in ownership of other utilities without some form of Commission authorization.[7] The blanket authorizations allowed BlackRock to acquire up to 20% ownership in aggregate by BlackRock, its affiliates, and its subsidiaries or up to 10% ownership by any individual BlackRock fund. To obtain this authorization, BlackRock made certain representations that the Commission accepted and relied upon, including:

- BlackRock would be only a "passive investor,"[8] and
- BlackRock would be filing only SEC Schedule 13G forms for companies where it held greater than 5% interest, which BlackRock represented meant that it would not exercise any "control" and would refrain from "any activity designed to replace the issuing company's management or influence the day-to-day commercial conduct of its business."[9]

The Commission granted BlackRock's request, subject to these representations and conditions, and it renewed the blanket authorization in 2013.[10]

In 2016, the Commission authorized BlackRock to also file SEC Schedule 13D forms for utilities where it owns a greater than 5% interest, but BlackRock again made specific representations about its activities, including:

---

[3] Task Force on Climate-Related Financial Disclosures, Metrics and Targets.
[4] Proxy Vote Disclosure (issproxy.com) (search for FirstEnergy (2021) and Dominion Energy (2021)).
[5] *See* 16 U.S.C. §§ 824b(b), 825h.
[6] Indeed, at least one commissioner has noted that BlackRock's claim to be a "passive investor" is "no longer credible." Commissioner Christie's Concurrence in BlackRock's Authorization to Buy Voting Securities (EC16-77).
[7] 131 FERC ¶ 61,063 (2010).
[8] *Id.* at ¶ 17.
[9] *Id.* at ¶¶ 19–21.
[10] *Id.* at ¶ 29; *see also* 143 FERC ¶ 62,046 (2013) ("Applicants will be non-controlling, passive investors.").

- BlackRock would not "[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."[11]

BlackRock's requests for blanket authorization thus presented two alternative scenarios to the Commission for situations where it owns greater than 5% of a utility: Schedule 13G and Schedule 13D. For both, BlackRock made specific representations to the Commission about what its activities would entail—expressly disclaiming certain activities related to "influenc[ing]" utilities. And more broadly BlackRock represented that it would be a "passive investor."

The Commission renewed the blanket authorization in 2019 and most recently in 2022, relying on BlackRock's assurances that the same terms and conditions still applied and that the material facts had not changed.[12] The 2022 order specifically states that BlackRock "provided assurances sufficient to demonstrate that [it] will not be able to influence control over U.S. Traded Utilities."[13] Nowhere do the Commission's orders suggest that BlackRock had altered or been released from its prior representations about what its activities would entail and what had it disclaimed.

BlackRock's Membership in Organizations and Policies for Net Zero

Contrary to its representations, BlackRock has played an increasingly active role in influencing the conduct of utility companies and amassing collective voting power in excess of the 20% limit. In January 2020, BlackRock joined CA100+, an activist group comprised of asset managers and others with $68 *trillion* in collective assets under management ("AUM"), determined to force companies to reduce their use of fossil fuels.[14] CA100+'s corresponding press release boasted that BlackRock would "bring even more heft to investor engagement" and had committed to "accelerating engagements with the largest corporate greenhouse gas emitters on climate change," which would "send[] a powerful signal to companies to reduce emissions."[15] Recognizing the significance of its actions, BlackRock even issued a statement acknowledging that "[c]ertain types of collective action can have regulatory ramifications."[16]

In 2021, BlackRock also joined NZAM, another activist group whose membership includes asset managers and others with $59 *trillion* in AUM. NZAM's members agree to "[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [its] ambition for all assets under management to achieve net zero emissions by 2050 or

[11] 155 FERC ¶ 62,051 (2016)
[12] 167 FERC ¶ 62,049 (2019) ("According to Applicants, there have been no changes in material facts and circumstances that would alter or affect the Commission's consideration in the prior authorization orders."); 179 FERC ¶ 61,049 (2022) (noting BlackRock's contention that there have been no changes in material facts and that their investments would be passive and non-controlling).
[13] 179 FERC ¶ 61,049 at P 19.
[14] *See, e.g.*, Committed to sustainability - Net-zero transition ("We have joined Climate Action 100+ to help ensure the world's largest greenhouse gas emitters take necessary action on climate change.").
[15] BlackRock joins Climate Action 100+ to ensure largest corporate emitters act on climate crisis
[16] Climate Action 100+ Sign-on Statement.

sooner."[17] In addition to NZAM, BlackRock also joined the Glasgow Financial Alliance for Net Zero ("GFANZ"). GFANZ has issued a report, stating "[t]he systemic change needed to alter the planet's climate trajectory can only happen if the entire financial system makes ambitious commitments and operationalizes those commitments with near-term action."[18] These statements are clear indications of an intent to actively influence utilities, and the collective shares of large asset managers such as BlackRock put the members of these climate initiatives well over the 20% limits that the Commission has set. They also suggest that – as to the issue of net zero – the members of the organizations are not "conduct[ing] their . . . proxy voting activities independently," which the Commission requires to avoid aggregating holdings.[19]

True to its commitments, BlackRock also adopted a policy seeking disclosure and targets aligned with less than 2°C of warming, by reference to both the Task Force on Climate-related Financial Disclosures ("TCFD") and the Science Based Targets Initiative ("SBTi"). TCFD recommends that organizations "[d]escribe the resilience of their strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario, where such information is material."[20] And BlackRock specifically encourages portfolio companies to disclose targets that "includ[e] 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."[21]

Similarly, BlackRock's commentary on "Climate Risk and the transition to a low-carbon economy," which explains to portfolio companies and others BlackRock's policies on this subject, stated in 2021 that BlackRock "expect[s] companies to disclose scope 1 and scope 2 emissions and accompanying GHG reduction targets" and "[c]ompanies in carbon-intensive industries should also disclose scope 3 emissions. A significant portion of the transition to a low-carbon economy hinges on the eventual retirement of fossil fuels…."[22] The commentary also states, "[i]ndustry bodies, such as the [SBTi] provide guidance and assurance processes for companies to set targets aligned with less than 2°C of warming and to track milestones."[23] The 2022 commentary makes similar statements.[24] These previous statements are significant, and may have resulted in changes of operations and plans by utilities that are still ongoing to today.

When BlackRock requires the "disclosure" of an emissions target, it is actually imposing a radical operational requirement for utilities' emissions reduction. The targets cannot be whatever the companies choose to set. Rather, BlackRock has stated that it asks "companies to 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."[25] SBTi, in turn, explains that for the International Energy Agency Net Zero Emissions by 2050 scenario ("NZE"), which it identifies

---

[17] Commitment – The Net Zero Asset Managers initiative.
[18] The Glasgow Financial Alliance for Net Zero: Our progress and plan towards a net-zero global economy, at p. 6.
[19] *See, e.g.*, *Cap. Rsch. & Mgmt. Co.*, 116 FERC ¶ 61,267, 62,068 P 22-23 (2006); *see also Franklin Resources, Inc.*, 126 FERC ¶ 61,250, 62,397 P 39 (2009) (rejecting request for "unlimited blanket authorization").
[20] Recommendations | Task Force on Climate-Related Financial Disclosures; *see also* PDF page 28, 2021-TCFD-Implementing_Guidance.pdf.
[21] Climate-related risk and the energy transition.
[22] Climate Risk and the Transition to a Low-Carbon Economy, at 3.
[23] *Id.*
[24] BlackRock's 2022 Engagement Priorities,
[25] BlackRock Client Letter | Sustainability.

as one of the key studies that "define the upper bound of sectoral carbon budgets that must not be exceeded by target-setting pathways,"[26] electricity generating utility companies must reduce reliance on fossil fuels from 61% in 2020 to 26% in 2030 and to 2% in 2050.[27] Thus the "scope 1 and scope 2 emissions and accompanying GHG reduction targets" referenced in BlackRock's commentary clearly require a substantial change in utility's operations to sharply reduce the use of fossil fuels.

CA100+ has made clear that now that many companies have provided the net zero targets it demanded, "[a]s a priority, investors need to see corporates outlining the practical actions on how they will begin to meet their net zero commitments."[28] CA100+ has also explained that in "Phase 2" of its initiative, which is scheduled to begin this year, "[t]he initiative will double down on the requirement for robust transition plans aligned with the Paris Agreement. It will also focus on deeper engagement by investor signatories to dismantle the barriers, and maximize the opportunities, that each sector encounters."[29] In other words, CA100+ members influence both the setting of targets, and the real-world company behavior to meet those targets.

<u>BlackRock's Votes and Engagements</u>

BlackRock not only has joined organizations and adopted policies for portfolio companies and net zero, but it also has individually and collectively leveraged massive holdings in utility companies to influence them to comply with the net zero agenda.

Some of BlackRock's recent attempts at controlling utilities have been brazenly public. For example, in 2021, BlackRock voted its shares against the Chairman of the Board for FirstEnergy, an electric utility based in Ohio, and explained that it did so because the company "does not have a rigorous net zero strategy."[30] The same year, BlackRock voted its shares against a director for Dominion Energy, an electric utility based in Virginia, and stated that it did so 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."[31] BlackRock has warned that it will continue to vote against company directors whose "companies have not provided scope 1 and 2 GHG emissions disclosures and meaningful short-, medium-, and long-term targets."[32]

Many of the significant attempts to influence control, however, have likely been behind closed doors, in the form of "investor engagement" with the backdrop of CA100+ and NZAM's coordinated activities and massive collective voting power. Thus, even if BlackRock does not itself vote on a proposal, it may still engage with a company. And even if it does not vote or engage, other members of the organizations it joins (*e.g.*, CA100+ and NZAM) engage with the implied or apparent support of the other members and their total assets and collective voting power.

---

[26] Pathway-to-Net-Zero.pdf (sciencebasedtargets.org) at pdf page 6.
[27] *Id.* at pdf pages 194, 198. These figures are calculated by adding and comparing the columns for "Fossil fuels with CCUS" and "Unabated fossil fuels" for 2020, 2030, and 2050 under "Shares (%)." "CCUS" refers to carbon capture, utilization, and storage.
[28] Climate Action 100+'s 2030 vision, PRI in Person | Climate Action 100+
[29] *Id.*
[30] Proxy Vote Disclosure (issproxy.com) (search for FirstEnergy).
[31] Proxy Vote Disclosure (issproxy.com) (search for Dominion Energy).
[32] 2022 climate-related shareholder proposals more prescriptive than 2021.

For example, CA100+'s "heft" (including the enormous weight of BlackRock's shares) is used to force targeted "focus companies" – including American utilities such as Dominion Energy and FirstEnergy[33] – to comply with CA100+'s demands. If a company refuses to capitulate after "engagement" meetings, CA100+'s members use their massive stock holdings to vote against company management, as demonstrated by BlackRock's Dominion Energy and FirstEnergy votes described above. Notably, CA100+'s pages show that after BlackRock's 2021 votes, both Dominion Energy and First Energy began submitting to CA100+'s agenda, and both utilities currently are committed to "net-zero GHG emissions by 2050 (or sooner)."[34]

BlackRock's actions, both individually and collectively as a member of CA100+ and NZAM, fly in the face of its representations to the Commission and the Commission's consistent limitation that asset managers constituting a "holding company" cannot own more than 20% of a utility's shares.

Questions

In light of the foregoing, we present the following questions. Please respond as soon as possible, but no later than August 11.

1. The Commission's 2022 order extending BlackRock's blanket authorizations states that BlackRock is "subject to audit to determine whether [it is] in compliance with the representations, conditions, and requirements" of the authorizations granted in the order.[35]
    a. Since first granting BlackRock blanket authorizations in 2010, has the Commission ever subjected BlackRock to an audit? If so, please describe the result(s) of such audits.
    b. If not, what are the conditions that would lead the Commission to audit BlackRock's conduct?
        i. If the Commission believes that the facts outlined in this letter are not sufficient grounds for conducting an audit, please explain why.

2. The Commission's 2010 grant of BlackRock's blanket authorization request was premised on BlackRock's promise to refrain from "any activity designed to replace the issuing company's management or influence the day-to-day commercial conduct of its business."
    a. How does the Commission define "any activity designed to replace the issuing company management"?
    b. How does the Commission define "any activity designed to … influence the day-to-day commercial conduct" of a business?
    c. Does the Commission agree that an investor is engaging in "any activity designed to replace the issuing company management" when the investor:
        a. Enters into agreements with other parties to attempt to force changes in company behavior?

---

[33] Companies | Climate Action 100+.
[34] Dominion Energy, Inc. | Climate Action 100+ (compare current assessments to March 2021 Assessments in drop-down menu); FirstEnergy Corp. | Climate Action 100+ (same).
[35] 179 FERC ¶ 61,049 (2022)

   b. Participates in "engagements" with the company in which the investor (or parties coordinating with the investor) demands that the company change its behavior?
   c. Uses its shares to vote against directors who have not complied with the investor's expressed wishes or expectations?

d. Does the Commission agree that an investor is engaging in "any activity designed to … influence the day-to-day commercial conduct" of a business when the investor:
   a. Enters into agreements with other parties to attempt to force changes in company behavior?
   b. Participates in "engagements" with the company in which the investor (or parties coordinating with the investor) demands that the company change its behavior?
   c. Uses its shares to vote against directors who have not complied with the investor's expressed wishes or expectations?

e. Please describe examples (and provide citations) to cases where the Commission has denied authorization for acquisition of securities under Section 203 of the FPA because the Commission has determined that the applicant has demonstrated a purpose to control a utility. If there is no precedent on this point, please explain the Commission's understanding as to when an investor would demonstrate sufficient activism to disqualify the investor from blanket authorizations.

3. In April 2022, the Commission extended BlackRock's blanket authorization for a three-year term. At that time, was the Commission aware that BlackRock had joined several ESG asset manager groups, including Climate Action 100+, the Glasgow Financial Alliance for Net Zero, and the Net Zero Asset Managers initiative?
   a. Specifically, was the Commission aware that as a member of Climate Action 100+,[36] BlackRock had committed to pressure utilities because "[b]oth coal and gas fired generation *must be phased out* to achieve global net-zero emissions by mid-century"?[37]
   b. Furthermore, was the Commission aware that Climate Action 100+ members such as BlackRock pressure utilities to publish a "coal and natural gas-generation retirement schedule consistent with a credible climate scenario" and a "retirement date assigned to each coal or gas unit"?[38]
      i. Is BlackRock's commitment to pressuring utilities to phase out coal and gas-fired projects relevant to the Commission's public-interest analysis under Section 203?
      ii. Do BlackRock's commitments constitute evidence that BlackRock may be investing in utilities for the purpose or with the effect of controlling the day-to-day operations or management of utilities?

---

[36] Committed to sustainability - Net-zero transition ("We have joined Climate Action 100+ to help ensure the world's largest greenhouse gas emitters take necessary action on climate change.").
[37] Progress Update | Climate Action 100+, at 44 (emphasis added).
[38] *Id.*

iii. Do these statements show that BlackRock exhibits a desire to substantially influence the policies and actions of utilities?

c. Was the Commission aware that Climate Action 100+ had publicly announced that it was targeting multiple American utilities for "engagement"?

4. In April 2022, was the Commission aware that in 2021, BlackRock voted against board members of Dominion Energy and FirstEnergy for failing to conform to BlackRock's climate agenda?
    a. Do BlackRock's actions with respect to Dominion Energy's board or FirstEnergy's board show a desire to control the day-to-day management, or influence the day-to-day commercial conduct, of either or both utilities?
    b. What investigation has the Commission conducted to determine whether BlackRock has exerted similar attempts to control or influence other American utilities?

5. During the 2020–2021 and 2021–2022 proxy seasons, BlackRock held over 2,000 company engagements each year on environmental issues with companies in its portfolio.[39]
    a. What investigations has the Commission conducted to determine whether BlackRock held engagements with American utility companies?
    b. What investigations has the Commission conducted to determine whether BlackRock's engagements were for the purpose of controlling the day-to-day management or operations, or influencing the day-to-day commercial conduct, of utilities?

Sincerely,

Michael S. Lee
United States Senator

Bill Cassidy, M.D.
United States Senator

Ted Cruz
United States Senator

Rick Scott
United States Senator

Bill Hagerty
United States Senator

Ted Budd
United States Senator

[39] Pursuing long-term value for our clients: BlackRock Investment Stewardship: A look into the 2020-2021 proxy voting year, at 8; 2022 Voting Spotlight: BlackRock Investment Stewardship: A look into the 2021-2022 proxy voting year, at 11.

Roger Marshall, M.D.
United States Senator

Eric Schmitt
United States Senator

Mike Braun
United States Senator

JD Vance
United States Senator

Pete Ricketts
United States Senator