VOR/DME. The proposed airway actions are described below.

V–48: V–48 currently extends between the Ottumwa, IA, VOR/DME and the Pontiac, IL, VOR/DME. The FAA proposes to remove the airway segment between the Ottumwa VOR/DME and the Burlington, IA, VOR/DME. As amended, the airway would be changed to extend between the Burlington VOR/DME and the Pontiac VOR/DME.

V–52: V–52 currently extends between the Des Moines, IA, VOR/Tactical Air Navigation (VORTAC) and the Ottumwa, IA, VOR/DME; and between the St. Louis, MO, VORTAC and the Pocket City, IN, VORTAC. The FAA proposes to remove the airway segment between the Des Moines VORTAC and the Ottumwa VOR/DME. As amended, the airway would be changed to extend between the St. Louis VORTAC and the Pocket City VORTAC.

V–206: V–206 currently extends between the Napoleon, MO, VORTAC and the Ottumwa, IA, VOR/DME. The FAA proposes to remove the airway segment between the Kirksville, MO, VORTAC and the Ottumwa VOR/DME due to the planned decommissioning of the VOR portion of the Ottumwa VOR/DME. Additionally, the FAA proposes to also remove the airway segment between the Napoleon VORTAC and the Kirksville VORTAC due to that airway segment overlapping V–10 which will remain charted and provide navigational guidance between the two NAVAIDs. As amended, the airway would be revoked in its entirety.

V–216: V–216 currently extends between the Lamar, CO, VOR/DME and the Mankato, KS, VORTAC; and between the Lamoni, IA, VOR/DME and the Janesville, WI, VOR/DME. The FAA proposes to remove the airway segment between the Lamoni VOR/DME and the Iowa City, IA, VOR/DME. As amended, the airway would be changed to extend between the Lamar VOR/DME and the Mankato VORTAC and between the Iowa City VOR/DME and the Janesville VOR/DME.

V–434: V–434 currently extends between the Ottumwa, IA, VOR/DME and the Brickyard, IN, VORTAC. The FAA proposes to remove the airway segment between the Ottumwa VOR/DME and the Moline, IL, VOR/DME. As amended, the airway would be changed to extend between the Moline VOR/DME and the Brickyard VORTAC.

The NAVAID radials listed in the VOR Federal Airway descriptions in the proposed regulatory text of this NPRM are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–48 [Amended]

From Burlington, IA; Peoria, IL; to Pontiac, IL.

* * * * *

V–52 [Amended]

From St Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; to Pocket City.

* * * * *

V–206 [Removed]

* * * * *

V–216 [Amended]

From Lamar, CO; Hill City, KS; to Mankato, KS. From Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

* * * * *

V–434 [Amended]

From Moline, IL; Peoria, IL; Champaign, IL; to Brickyard, IN.

* * * * *

Issued in Washington, DC, on December 19, 2023.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2023–28381 Filed 12–26–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. AD24–6–000]

Federal Power Act Section 203 Blanket Authorizations for Investment Companies

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comment on whether, and if so, how, the Commission should revise its policy on providing blanket authorizations for investment companies under the Federal Power Act. The Commission also seeks comment on what constitutes control of a public utility in evaluating holding companies', including investment companies', requests for blanket authorization and what factors it should consider when evaluating control over public utilities as part of a request for blanket authorization.

DATES: Initial comments are due March 26, 2024 and reply comments are due April 25, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native

applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry (NOI), the Commission seeks comment on whether, and if so, how, the Commission should revise its policy on providing blanket authorizations for investment companies [1] under section 203(a)(2) of the Federal Power Act (FPA).[2] The Commission also seeks comment on what constitutes control of a public utility in evaluating holding companies', including investment companies', requests for blanket authorization and what factors it should consider when evaluating control over public utilities or holdings companies thereof as part of a request for blanket authorization.

I. Background

2. Section 203(a)(2) of the FPA provides that:

> No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.[3]

3. The Commission has both established in its regulations and granted by Commission order blanket authorizations under section 203(a)(2) for transactions that meet certain criteria. In Order No. 669,[4] the Commission promulgated regulations to implement the amendments to section 203 in the Energy Policy Act of 2005 (EPAct 2005),[5] including granting blanket authorizations for certain types of transactions, such as foreign utility acquisitions by holding companies, intra-holding company system financing and cash management arrangements, certain internal corporate reorganizations, and certain investments in transmitting utilities and electric utility companies.[6] The Commission stated that its goal in promulgating the new regulations was ''to ensure that all jurisdictional transactions subject to section 203 are consistent with the public interest and at the same time ensure that our rules do not impede day-to-day business transactions or stifle timely investment in transmission and generation infrastructure.'' [7] For example, one of the blanket authorizations granted by the Commission provides authorization for holding companies regulated by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency, under the Bank Holding Company Act of 1956 as amended by the Gramm–Leach–Bliley Act of 1999, to acquire and hold an unlimited amount of the securities of holding companies that include a transmitting utility or an electric utility company.[8] The blanket authorization requires that the securities be held either as a fiduciary, as principal for derivatives hedging purposes incidental to the business of banking (so long as it commits not to vote such securities to the extent they exceed 10 percent of the outstanding shares), as collateral for a loan, or solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years (subject to conditions and a reporting requirement).[9]

4. Prior to Order No. 669, the Commission's order in *UBS AG* granted a blanket authorization on an individual basis for UBS AG and Bank of America to acquire public utility securities during their banking businesses.[10] The Commission stated that it was satisfied that the applicants in that proceeding would be precluded from using their fiduciary holdings to serve their own interests, rather than the interests of their fiduciary clients. The Commission stated that ''backstop protection is provided by the procedures, controls and monitoring programs banking institutions are required to have in place in order to conduct fiduciary activities and the comprehensive nature of supervision and regulation by Bank Regulators of banks' fiduciary.'' [11]

5. The Commission has also issued blanket authorizations, on a case-specific basis to investment companies, that allowed the acquisitions of securities in public utilities over the $10 million threshold established by EPAct 2005 and up to 20% of the outstanding voting securities of a given public utility. For instance, in 2006, the Commission granted a blanket authorization for Capital Research and Management Company to acquire utility securities on behalf of its funds, subject to certain conditions.[12] As a result of these conditions, including limitations on the amount of both collective ownership and ownership of securities for each individual fund, governing policies, and status as beneficial owners eligible to file Schedule 13G under the Securities' and Exchange Act of 1934,[13] the Commission found that Capital Research and Management Company could not exercise control over public utilities, and that there would be no harm to the public interest that could otherwise result from their holding significant equity positions in public

[1] For the purposes of this NOI, the term ''investment companies'' refers to those companies meeting the definition of ''investment companies'' in the Investment Company Act of 1940, which includes any issuer that ''holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.'' 15 U.S.C. 80a–3. If commenters believe the Commission should apply a different definition or use a different term, they are encouraged to explain in their comments.

[2] 16 U.S.C. 824b(a)(2).

[3] *Id.*

[4] *Transactions Subject to FPA Section 203,* Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g,* Order No. 669–A, 115 FERC ¶ 61,097, *order on reh'g,* Order No. 669–B, 116 FERC ¶ 61,076 (2006); *see Blanket Authorization Under FPA Section 203,* Order No. 708, 122 FERC ¶ 61,156, *order on reh'g,* Order No. 708–A, 124 FERC ¶ 61,048 (2008), *order on reh'g,* Order No. 708–B, 127 FERC ¶ 61,157 (2009) (amending the Commission's regulations pursuant to FPA section 203 to provide for additional blanket authorizations under FPA section 203(a)(1)).

[5] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

[6] *See* 18 CFR 33.1(c).

[7] Order No. 669, 113 FERC ¶ 61,315 at P 4.

[8] 18 CFR 33.1(c)(9).

[9] *See id.* § (c)(9)(i)–(iv).

[10] *UBS AG,* 101 FERC ¶ 61,312 (2002), *order on reh'g,* 103 FERC ¶ 61,284, *order on reh'g,* 105 FERC ¶ 61,078 (2003).

[11] *UBS AG,* 105 FERC ¶ 61,078 at P 16.

[12] *Cap. Research & Mgmt. Co.,* 116 FERC ¶ 61,267 (2006).

[13] 15 U.S.C. 78a *et seq.*

utilities.[14] The Commission noted that the repeal of the Public Utility Holding Company Act of 1935 (PUHCA 1935) and modifications to section 203 of the FPA had changed the law governing investment in utility securities.[15] The Commission found that a blanket authorization was appropriate to ''encourage greater investment in utilities by mutual funds,'' provided that the Commission can perform continuing oversight in accordance with section 203 of the FPA.[16]

6. The Commission issued other individual blanket authorizations after its order in *Capital Research & Management Co.* applying similar conditions.[17] The blanket authorizations were time-limited, for a period of three years, based on the Commission's reasoning that it should periodically reevaluate whether the blanket authorizations remained consistent with the public interest.[18] The Commission has in several instances granted subsequent requests for extensions of those blanket authorizations upon the same terms and conditions of the original orders.[19]

7. In 2010, the Commission undertook a generic proceeding to address the acquisition of voting securities of a public utility by holding companies in response to a petition by the Electric Power Supply Association (EPSA) requesting that the Commission provide clarification on the Commission's jurisdiction over investors holding between 10% and 20% of a public utility's outstanding voting securities who are eligible to file a statement of beneficial ownership with the Securities and Exchange Commission.[20] In that proceeding, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to create a FERC form wherein holding companies would affirm that an investor did not control a public utility when the investor refrained from engaging in certain actions.[21] Entities signing the form would have been eligible for a blanket authorization for the acquisition of up to 20% of the outstanding voting securities of a public utility or holding company thereof. Comments on the NOPR generally fell into two groups. The first group believed that the Commission's proposal was too restrictive and that an investor would be unwilling to commit to the restrictions on the proposed FERC form, such that the Commission's proposal did not provide the original relief requested by EPSA; the second group believed the Commission could be opening up wholesale energy markets to anticompetitive behavior through partial acquisitions of the securities of multiple public utilities without adequate oversight. The Commission ultimately decided that, having considered these comments, it was persuaded to not seek to adopt the proposed reforms, and withdrew the NOPR and terminated the rulemaking proceeding.[22]

8. Since the Commission revised its regulations to expand blanket authorizations under section 203(a)(2) and began granting case-specific blanket authorizations for holding companies, including investment companies, there have been changes in the public utility, finance, and banking industries that warrant consideration of whether the Commission's blanket authorization policy continues to work as intended. These changes include consolidation in the public utility industry as well as the growth of large index funds and asset managers. Factors such as the repeal of PUHCA 1935 and increased interest in U.S. utility assets by foreign companies/investors and private equity investors have led to the greater consolidation of utility holding companies, as shown by utility merger activity of approximately $200 billion from 2012 to 2018.[23] At the beginning of 2010, there was approximately $2.3 trillion invested in index funds, which grew to $11.4 trillion by the end of 2019.[24] Index funds are estimated to have grown from 20% of the fund market in 2011 to 43% by the end of 2021.[25] Both commenters and FERC Commissioners have noted that this change in the manner in which assets are owned and controlled warrants the Commission's careful consideration to make sure that its blanket authorization policy is consistent with the public interest.[26]

II. Discussion

9. We are issuing this NOI to further explore whether, and if so, how, the Commission should revise its policy on blanket authorizations for holding companies, including investment companies, under section 203(a)(2) of the FPA. We invite all interested persons to submit comments and reply comments on any or all of the questions listed below. Commenters need not answer all the questions.

A. Blanket Authorization Policy

10. As noted above, the Commission has granted company-specific blanket authorizations under section 203(a)(2) for holding companies, including investment companies' managed funds, to acquire the voting securities of public utilities and holding companies thereof, in addition to the blanket authorizations granted by the Commission in its regulations. We seek comment on

[14] *Cap. Research & Mgmt. Co.,* 116 FERC ¶ 61,267 at P 32.

[15] *Id.* PP 26–27 (citing 15 U.S.C. 79a *et seq.*).

[16] *Id.* P 28.

[17] *See Ecofin Holdings Ltd.,* 120 FERC ¶ 61,189 (2007); *The Goldman Sachs Grp.,* 121 FERC ¶ 61,059 (2007); *Morgan Stanley,* 121 FERC ¶ 61,060 (2007); *Legg Mason, Inc.,* 121 FERC ¶ 61,061 (2007); *Horizon Asset Mgmt., Inc.,* 125 FERC ¶ 61,209 (2008); *Franklin Res., Inc.,* 126 FERC ¶ 61,250 (2009); *BlackRock, Inc.,* 131 FERC ¶ 61,063 (2010). Additional blanket authorizations were granted via delegated authority where applicants met the criteria established in previously-issued Commission orders. *See T. Rowe Price Grp., Inc.,* 119 FERC ¶ 62,048 (2007) (delegated order); *Lord, Abbett & Co. LLC,* 129 FERC ¶ 62,239 (2009) (delegated order); *Mario J. Gabelli GGCP, Inc.,* 137 FERC ¶ 62,127 (2011) (delegated order); *The Vanguard Grp., Inc.,* 168 FERC ¶ 62,081 (2019) (delegated order).

[18] *See Cap. Research & Mgmt. Co.,* 116 FERC ¶ 61,267 at P 46 (''[G]iven the importance of balancing the need for regulatory oversight with the provision of some business certainty, the Commission grants the requested authorizations, as conditioned, on a temporary basis. The authorization expires three years from the date of this order, without prejudice to requests to extend the authorization.'').

[19] *See, e.g., The Goldman Sachs Grp.,* 134 FERC ¶ 61,227 (2011); *BlackRock, Inc.,* 179 FERC ¶ 61,049 (2022).

[20] *Control & Affiliation for Purposes of Mkt.-Based Rate Requirements Under Section 205 of the Fed. Power Act & the Requirements of Section 203 of the Fed. Power Act,* 130 FERC ¶ 61,046, at P 4 (2010) (citing Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (2000)).

[21] *Id.* PP 36–37 (requiring an affirmation from the investor that, among other things, it will: not seek or accept representation on the public utility's board of directors or otherwise serve in any management capacity; not request or receive non-public information, either directly or indirectly, concerning the business or affairs of the public utility; and not solicit, or participate in any solicitation of, proxies involving the public utility).

[22] *Control & Affiliation for Purposes of Mkt.-Based Rate Requirements Under Section 205 of the Fed. Power Act & the Requirements of Section 203 of the Fed. Power Act,* 157 FERC ¶ 61,064 (2016).

[23] *See* Lillian Federico, *State Regulatory Reviews Are Creating Headwinds For Utility Merger Activity,* S&P GLOBAL (Apr. 5, 2019), *https://www.spglobal.com/marketintelligence/en/news-insights/research/state-regulatory-reviews-are-creating-headwinds-for-utility-merger-activity.*

[24] Financial Times, *Index Funds Break Through $10m-in-Assets Mark, https://www.ft.com/content/a7e20d96-318c-11ea-9703-eea0cae3f0de* (Jan. 7, 2020).

[25] Investment Company Institute, *2022 Investment Company Factbook,* at 29 (2022), *https://www.icifactbook.org/pdf/2022_factbook.pdf.*

[26] Commissioners Danly, Clements, and Christie have raised concerns related to the influence of large investment companies over public utilities and whether there is adequate scrutiny in the grant of some blanket authorizations. *See BlackRock, Inc.,* 179 FERC ¶ 61,049 (Clements, Comm'r, concurring at P 3); *BlackRock, Inc.,* 179 FERC ¶ 61,049 (Christie, Comm'r, concurring at PP 4–6); Joint Statement of Commissioner Danly & Commissioner Christie Regarding The Vanguard Group, Inc. *et al.,* Docket No. EC19–57–001, at PP 7–9 (Aug. 11, 2022) (eLibrary Accession No. 20220811–4002); Joint Statement of Commissioner Danly & Commissioner Christie Regarding The Vanguard Group, Inc., *et al.,* Docket No. EC19–57–002, at P 7 (May 9, 2023) (eLibrary Accession No. 20230509–4000).

current Commission policy as well as whether, and if so, how, the Commission should revise its policy.

(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.

(Q2) If the Commission's current policy is insufficient, how should the Commission revise its case-specific blanket authorizations for holding companies, including investment companies, to acquire voting securities? How should the Commission revise its regulations providing certain blanket authorizations under section 203(a)(2)?

(Q3) Are the existing conditions and restrictions associated with case-specific blanket authorizations, such as the submission of Securities and Exchange Commission (SEC) Schedule 13D and 13G filings, effective in ensuring that holding companies, including investment companies, lack control over public utilities, and holding companies thereof, such that the Commission can be assured that the transactions underlying the blanket authorization are consistent with the public interest?

(Q4) Does the current scope or availability of blanket authorizations for the acquisition of voting securities by holding companies, including investment companies, create concerns regarding an adverse effect on competition or jurisdictional rates?

(Q5) If there are concerns with the current policy regarding grants of blanket authorizations to holding companies, including investment companies, are there specific commitments or other conditions from holding companies, including investment companies, that could give the Commission assurance that such blanket authorizations are consistent with the public interest?

(Q6) The blanket authorization in 18 CFR 33.1(c)(9)(iv) requires that a holding company file—when securities are held ''[s]olely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years,''—on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held. Specifically, there have been cases where it was unclear, based on the record, whether an entity has satisfied the requirements for blanket authorization under 18 CFR 33.1(c)(9).[27] Should the Commission require a holding company, or a subsidiary of that company, that qualifies for FPA section 203 blanket authorization under 18 CFR 33.1(c)(9) to report on what basis it qualifies (*i.e.,* ''(i) [a]s a fiduciary; (ii) [a]s principal for derivatives hedging purposes incidental to the business of banking and it commits not to vote such securities to the extent they exceed 10 percent of the outstanding shares; (iii) [a]s collateral for a loan; or (iv) [s]olely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years . . . .'')? Are there any other measures that the Commission should take to oversee compliance with the terms of these blanket authorizations?

(Q7) The case-specific blanket authorizations granted by the Commission to investment companies generally require informational filings of holdings, similar to that required of the blanket authorization in 18 CFR 33.1(c)(9)(iv). Are these informational filings sufficient for the Commission to maintain an appropriate level of oversight for compliance with the terms of blanket authorizations? Are there any other measures that the Commission should take to oversee compliance with the terms of these blanket authorizations?

B. Large Investment Companies

11. 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%.[28] Some have argued that the size of these investment companies creates issues related to competition and gives the investment companies unique leverage over the utilities whose voting securities they control.[29] Additionally, 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.[30] We seek comment on whether, and if so, how, the Commission should consider the size of an investment company in evaluating a request for blanket authorization under section 203(a)(2).

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

(Q9) Please describe whether and how the Commission should consider holding companies', including investment companies', pre-existing ownership and control of public utilities and holding companies thereof in determining whether to grant blanket authorizations under section 203(a)(2).

(Q10) How should the Commission distinguish between various types of investment vehicles for purposes of section 203(a)(2) blanket authorizations?

(Q11) What are the impacts on the public interest, both positive and negative, of holding companies, including investment companies, holding voting securities in multiple

[27] *See, e.g., Black Hills Colo. Elec., LLC,* 184 FERC ¶ 61,172, at P 19 (2023) (''Black Hills MBR Sellers state that State Street represented to them that State Street qualifies under section 33.1(c)(9) of the Commission's regulations for blanket authorization under section 203(a)(2) of the FPA to acquire and hold an unlimited amount of securities of holding companies that include a transmitting utility or an electric utility company.'') (citation omitted); *see also id.* (Danly, Comm'r, concurring at P 3) (''It is not clear to me whether State Street satisfies the requirements above and nothing in Black Hills MBR Sellers' filing demonstrates which, if any, of the elements of our regulation State Street satisfies.'').

[28] *See* Nathan Atkinson, *If Not the Index Funds, Then Who?,* 17 BERKELEY BUS. L.J. 44, 45 (2020) (''In recent years, large asset managers have reached incredible sizes, managing trillions of dollars of assets on behalf of tens of millions of clients. The largest three, BlackRock, Vanguard, and State Street, taken together (the 'Big Three'), vote about 20% of shares in most large companies, with the majority of these shares held in passive index funds.'') (citation omitted); Lucian Bebchuk & Scott Hirst, *The Specter of the Giant Three,* 99 B.U. L. REV. 721, 724 (2019).

[29] *See* Public Citizen, Inc., Protest, Docket No. EC16–77–002, at 1 (filed Mar. 11, 2022) (''Not only is it impossible for a fund manager of BlackRock's size and scope to remain a passive investor, scholarly research demonstrates that BlackRock's accumulation of voting securities constitutes control over utilities, and its horizontal power over competing utilities harms competition.'').; *see also* Einer Elhauge, *Horizontal Shareholding,* 129 HARV. L. REV. 1267, 1267 (2016) (''A small group of institutions has acquired large shareholdings in horizontal competitors throughout our economy, causing them to compete less vigorously with each other.'').

[30] *See* Consumers' Research, Inc., Motion to Intervene and Protest, Docket No. EC19–57–002, at 4–5 (filed Nov. 28, 2022) (arguing that the three largest index funds have ''have embarked on a full-scale engagement and proxy-voting strategy to force utility companies to comply with various decarbonization goals''); *see also* Eric C. Chaffee, *Index Funds & ESG Hypocrisy,* 71 CASE W. RES. L. REV. 1295, 1298–1299 (2021) (noting statements by index fund managers related to climate and sustainability goals).

public utilities and Commission-regulated entities?

(Q12) What other ways may up to 20% ownership or control of multiple public utilities and holding companies thereof by holding companies, including investment companies, affect the public interest that the Commission should consider?

C. Evaluation of Control Under Section 203 of the FPA

12. Often, when seeking a blanket authorization under section 203(a)(2), an investment company will argue that its investments in public utilities do not allow for it to control the public utility, including control over the day-to-day management and operations of the utility, or holding company thereof.[31] However, it has been argued that by holding voting securities in a large number of public utilities, investment companies are able to influence utility behavior in ways that are not captured by the Commission's current analysis of control.[32] We seek comment on what factors the Commission should consider when evaluating control over public utilities as part of a request for blanket authorization.

(Q13) In what way may a holding company, including an investment company, exert control over public utilities that is not currently captured by the Commission's current policies and regulations?

(Q14) What strategies or actions taken by holding companies, including investment companies, or the actions of a public utility that is the subject of a blanket authorization could demonstrate control or a degree of influence that would require prior Commission review under section 203(a)(2)? In other words, what are the indicia of control that the Commission could look to when assessing whether a holding company can exercise control?

(Q15) Does holding the voting securities, notwithstanding commitments not to exercise control, of multiple public utilities provide a form of control or influence that is not addressed by the Commission's current polices and regulations? If so, how? And how should the Commission resolve this form of control or influence?

(Q16) Should the Commission consider the impact of investment companies holding public utility voting securities on long-term planning by public utilities or other issues beyond day-to-day control over utility operations? If so, how?

(Q17) What corporate governance factors should the Commission consider when evaluating whether investment companies can exercise control over public utilities? For instance, should the Commission consider the ability of an investment company to influence board membership of a public utility and, if so, how?

III. Comment Procedures

13. The Commission invites interested persons to submit comments on the matters and issues identified in this notice. Initial comments are due March 26, 2024 and reply comments are due April 25, 2024. Comments must refer to Docket No. AD24–6–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

14. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

15. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IV. Document Availability

16. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*).

17. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov.*

By direction of the Commission. Commissioner Christie is concurring with a separate statement attached.

Issued: December 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

United States of America

Federal Energy Regulatory Commission

Federal Power Act Section 203 Blanket Authorizations for Investment Companies

Docket No. AD24–6–000

(Issued December 19, 2023)

CHRISTIE, Commissioner, *concurring:*

1. Public utilities, sometimes called ''public service corporations'' or ''public service companies'' under various state laws,[1] are not garden-variety, for-profit, shareholder-owned companies. In particular, public utilities that provide electrical power to retail customers are usually holders of a state-granted monopoly franchise that comes with various public service obligations, such as providing reliable power service at rates that are just and reasonable. So whether a public utility is owned by investors directly or through a holding company structure, it is absolutely essential for regulators to make sure that the interests of investors do not conflict with the public service obligations that a utility has. And yes, there *is* a potential conflict. That potential conflict requires heightened regulatory scrutiny when huge investment companies and asset managers, as well as large private equity funds, which individually and collectively direct literally trillions of dollars in capital, appear to be acting not as passive investors simply seeking the best risk-based returns for their own clients, but instead appear to be *actively* using their investment power to affect how the

[31] *See, e.g., BlackRock, Inc.,* 131 FERC ¶ 61,063 at P 17.

[32] *See* Senator Michael S. Lee et al., Letter to Commission, Docket No. EC16–77–002 at 5 (filed June 28, 2023) (''Many of [BlackRock's] significant attempts to influence control, however, have likely been behind closed doors, in the form of 'investor engagement' with the backdrop of [Climate Action 100+] and [the Net Zero Asset Managers Initiative]'s coordinated activities and massive collective voting power.'').

[1] *See, e.g.,* Va. Code Ann. § 56.1 *et seq.*

utility meets its own public service obligations. That is why this proceeding is so essential, to explore those issues and determine whether the Commission's own regulations and regulatory practices are still sufficient to protect the interests of the customers of public utility companies which, again, are likely to be monopoly providers of a vital public service such as electrical power.

2. As I mentioned in my concurrence to an earlier order extending BlackRock, Inc.'s (BlackRock) blanket authorization under section 203 of the Federal Power Act (FPA),[2] it simply is no longer a credible assertion that investment managers, like BlackRock, State Street Corporation, and The Vanguard Group, Inc., are always or should be assumed to be merely passive investors. These investment managers are often the three biggest investors in publicly traded companies across the U.S. economy, including the utility industry, and wield significant financial power by virtue of their investments.[3] These investment managers may occasionally use that financial power to push various types of policy agendas, agendas that may ultimately conflict with the utility's public service obligations to its customers.[4] Or, totally different from any policy goal, the threat may come from a private equity investor's attempt to turn a quick profit on a short-term trade by undercutting utility practices that are designed to serve its retail customers over the long term, not the short-term interests of the private equity investor.

3. One focus recently, and rightfully so, has been on ''ESG'' (environmental, social, and governance-related) corporate initiatives, with huge asset managers pushing policy decisions that should be left to elected legislators. For example, I have pointed out the reliability problems that will result from premature dispatchable generation retirements that may come from these initiatives.[5] 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.

4. But let us be clear—''ESG'' investor activity is simply a symptom of a larger, more pernicious threat that has always existed in the utility industry: improper investor influence and control over public utilities. Large investors can and do force utilities to make decisions that are contrary to their public service obligations to their retail customers. This, among other related concerns, is exactly why Congress enacted a suite of consumer protection statutes, including the FPA almost 100 years ago. Congress's subsequent revisions to the FPA over the years, such as by the Energy Policy Act of 2005, signal the ongoing importance of consumer protection in the Commission's regulatory responsibilities, including under section 203. Congress may have directed the Commission to streamline its regulations to facilitate greater investments in the utility industry, such as through section 203 blanket authorizations,[6] but that streamlining does not, and should *never,* come at expense of protecting consumers. Indeed, it is the Commission's task to balance these two competing responsibilities and to continue to revisit and evaluate that balance. So I fully agree that this NOI is timely and compelling and I look forward to moving forward on it.

For these reasons, I respectfully concur.

Mark C. Christie,
Commissioner.

[FR Doc. 2023–28665 Filed 12–22–23; 2:00 pm]

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[2] *BlackRock, Inc.,* 179 FERC ¶ 61,049 (2022) (Christie, Comm'r, concurring at P 3) (BlackRock Concurrence), *available at https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-blackrocks-authorization-buy-voting-securities.*

[3] You can see the extent of these investment managers' holdings through the quarterly reports the Commission receives as part of the requirements associated with section 203(a)(2) blanket authorizations. *See, e.g.,* BlackRock, Quarterly Report, Docket No. EC16–77–002 (filed Nov. 15, 2023) (detailing holdings in several publicly traded holding companies with public utility subsidiaries).

[4] *See* BlackRock Concurrence at PP 4–5.

[5] *See, e.g.,* Testimony of Commissioner Mark C. Christie, *Oversight of FERC: Adhering to a Mission of Affordable and Reliable Energy for America,* United States House of Representatives (June 12, 2023), *available at https://www.ferc.gov/media/testimony-commissioner-mark-c-christie-oversight-ferc-adhering-mission-affordable-and;* Written Testimony of Commissioner Mark Christie Before the Committee on Energy and Natural Resources, United States Senate (Sept. 27, 2021), *available at https://cms.ferc.gov/media/written-testimony-commissioner-mark-christie-committee-energy-and-natural-resources-united.*

[6] *See, e.g., Transactions Subject to FPA Section 203,* Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g,* Order No. 669–A, 115 FERC ¶ 61,097, *order on reh'g,* Order No. 669–B, 116 FERC ¶ 61,076 (2006).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0590; FRL–11615–01–R9]

Air Plan Approval; California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, through parallel processing, state implementation plan (SIP) revisions from the Yolo-Solano Air Quality Management District (YSAQMD or ''District'') to address Clean Air Act (CAA or ''Act'') requirements related to the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards''). These revisions concern emissions of oxides of nitrogen (NO_X) from biomass boilers, and also address reasonably available control technology (RACT) requirements for major sources of NO_X in the portion of the Sacramento Metro, CA, nonattainment area that is subject to YSAQMD jurisdiction. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before January 26, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0590 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit