

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Vanguard Group, Inc.)	
Vanguard Global Advisors, LLC)	
Vanguard Asset Management, Ltd.)	Docket Nos. EC19-57-001;
Vanguard Investments Australia Ltd.)	EC-57-002
Vanguard Fiduciary Trust Company)	

**MOTION TO INTERVENE AND PROTEST
BY THE STATES AND ATTORNEYS GENERAL OF UTAH, INDIANA, ALABAMA,
ARKANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA,
OHIO, SOUTH CAROLINA, SOUTH DAKOTA, AND TEXAS**

Pursuant to Rule 211 and Rule 214 of the Practice and Procedures of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ the States of Utah, Indiana, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Ohio, South Carolina, South Dakota, and Texas, by and through their Attorneys General (collectively, the States) move to intervene and protest the application filed by The Vanguard Group, Inc. and its affiliated entities and subsidiaries (collectively, Vanguard), which requests a blanket authorization under Section 203 of the Federal Power Act (“FPA”) for acquisitions of voting securities of publicly traded utilities.² In particular, Vanguard asks the Commission for a three-year extension of the blanket authorization granted in 2019 (“2019 Authorization”)³ for Vanguard to acquire the voting securities of any utility, either up to 20% ownership in aggregate by Vanguard, its affiliates, and its subsidiaries or up to 10% ownership by any individual Vanguard fund. Vanguard also seeks approval to modify the terms of the 2019 Authorization by excluding from the 10% and 20%

¹ 18 C.F.R. §§ 385.211, 385.214.

² Joint Application for Authorization Under Section 203 of the Federal Power Act, *The Vanguard Group, Inc.*, Docket No. EC19-57-001 (Feb. 16, 2022) (“Application”).

³ *The Vanguard Group, Inc.*, 168 FERC ¶ 62,081 (2019) (“2019 Authorization”).

ownership limits the voting securities held in portfolios that Vanguard claims are managed by unaffiliated external advisors in externally advised funds.

We respectfully request that the Commission set a hearing in this proceeding to determine whether extending Vanguard's blanket authorization is in the public interest. The Commission granted the 2019 Authorization based on assurances from Vanguard that it would refrain from investing "for the purpose of managing" utility companies.⁴ Vanguard also guaranteed that it would not seek to "exercise any control over the day-to-day management" of utility companies nor take any action "affecting the prices at which power is transmitted or sold."⁵ Now, Vanguard's own public commitments and other statements have at the very least created the appearance that Vanguard has breached its promises to the Commission by engaging in environmental activism and using its financial influence to manipulate the activities of the utility companies in its portfolio. A hearing in this matter is warranted to determine the extent to which Vanguard has violated the 2019 Authorization and whether granting Vanguard a blanket authorization is contrary to the public interest.

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⁴ *Id.* ¶ 64,219.

⁵ *Id.* ¶ 64,220

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II. Motion to Intervene

The Attorneys General seek to intervene in this proceeding to represent the interests of the States as well as of individuals and entities residing therein who consume electricity, or are otherwise affected by the Commission's decision on Vanguard's Application. Intervention is proper here because the State Attorneys General both "represent[] an interest which may be directly affected by the outcome of the proceeding" and because their participation would be in the public interest.⁶ The Attorneys General are public officers charged with various statutory duties related to representing their States.⁷ Resolution of this matter may directly affect the interests of everyday consumers and other ratepayers in the States whose rates or reliability of electricity supply may be adversely affected, as well as other participants in the States. There are multiple investor-owned utilities serving residents of the States that are joining this Motion. If these

⁶ 18 C.F.R. § 385.214(b)(2)(ii)–(iii).

⁷ See generally Ind. Code § 4-6-1-6; Utah Code Ann. § 67-5-1.

utilities' services became less reliable, or costs increased, then consumers in the States would necessarily be harmed.

For example, PacifiCorp, which serves Utah, is owned by Berkshire Hathaway Energy, which is owned by Berkshire Hathaway, Inc. (Berkshire). In 2022, Vanguard supported climate disclosure for certain of Berkshire's "carbon-intensive operating companies" and also noted that "[c]ertain of Berkshire's operating companies have also made net GHG emissions commitments."⁸ Berkshire Hathaway's website shows that currently 20% of PacifiCorp's energy comes from coal or natural gas generation.⁹ In Utah, this includes the Carrant Creek, Hunter, and Huntington facilities.¹⁰ Consumers in Utah would be harmed if their costs went up because of closure of these facilities or substitution of more expensive energy sources.

Indiana is similarly served by multiple investor-owned utilities, whose ultimate parent companies of are publicly traded.¹¹ These include Northern Indiana Public Service Company, (NIPSCO), which is a subsidiary of NiSource; Indiana-Michigan Power (I&M), which is a subsidiary of American Electric Power; Duke Energy, which is a subsidiary of Duke Energy Corporation; Indianapolis Power & Light (IPL), which is a subsidiary of AES Corporation; and Vectren, which is a subsidiary of CenterPoint Energy.¹² These companies presently supply consumers with energy generated from coal and natural gas.¹³ Consumers in Indiana would be

⁸ https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/perspectives-and-commentary/Insights_Berkshire_final_05032022.pdf.

⁹ <https://brkenenergy.com/esg-sustainability/environmental>.

¹⁰ <https://www.pacificorp.com/energy/thermal.html>.

¹¹ <https://www.in.gov/oed/indianas-energy-landscape/electricity/investor-owned-utilities/>.

¹² *Id.*

¹³ *See, e.g.*, <https://www.duke-energy.com/energy-education/how-energy-works/energy-from-coal>; *see also* <https://www.duke-energy.com/our-company/about-us/power-plants>.

harmful if their costs went up because of closure of these facilities or substitution to more expensive energy sources.

Mississippi is served by investor-owned utilities, whose ultimate parent companies are publicly traded. These include Mississippi Power Company, a subsidiary of Southern Company which conducts its business through electric operating companies in three states, natural gas distribution companies in four states, a competitive generation company serving wholesale customers across America, and a leading distributed energy infrastructure company, (<https://www.southerncompany.com/sustainability/southern-company-overview.html>), and Entergy Mississippi, LLC, a subsidiary of Entergy Corporation which is an integrated energy company engaged in electric power production, transmission and retail distribution operations in four states, (<https://www.energy.com/about-us/>). These companies presently supply consumers in Mississippi and elsewhere in the Southeastern United States with energy generated from fossil fuel sources, including coal and natural gas. (<https://www.southerncompany.com/about/our-business.html>); (<https://www.energy.com/operations-information/>). Consumers in Mississippi would be harmed if their costs went up because of closure of these facilities or substitution to more expensive energy sources.

Arkansas, Louisiana, and Texas are similarly served by subsidiaries of Entergy Corporation. <https://www.energy.com/residential/>. Arkansas is served by Entergy Arkansas LLC. Louisiana is served by Entergy Louisiana, LLC and Entergy New Orleans, LLC. Texas is Served by Entergy, Texas Inc.

American Electric Power Co., Inc. (“AEP”) serves 5.5 million customers in eleven states—Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. <https://www.aep.com/about/facts>. AEP is a Climate Action 100+ target

company, and in 2020 set an ambition to achieve Net zero GHG Emissions by 2050. <https://www.climateaction100.org/company/american-electric-power-company-inc/>. However, Climate Action 100+ has graded AEP in every category other than 2050 ambition as not meeting its criteria or only partially meeting its criteria. *Id.* AEP now reports that its strategy is to achieve “net zero carbon dioxide emissions by 2045, with an interim goal to cut emissions 80% from 2005 levels by 2030.” <https://www.aep.com/about/ourstory/cleanenergy>. Moreover, AEP reports that, as of 2022, 41% of its electricity generation came from coal, and 27% came from natural gas. <https://www.aep.com/about/businesses/generation>. It reports that it intends to cut its percentage of electricity generation from coal from 41% to 19% by 2032 and increase its percentage of generation from hydro, wind, solar & pumped storage from 23% to 53% during the same time period. *Id.* Consumers in the proposed intervenor States will be required to pay for this transition, pay any increased costs from these alternative sources of energy, and suffer the consequences of any loss of reliability in their power supply.

Alabama is served by the Alabama Power Company, which is a subsidiary of the Southern Company. <https://www.southerncompany.com/about/our-companies.html>. The Southern Company is a publicly traded company and a Climate Action 100+ focus company. <https://www.climateaction100.org/company/the-southern-company/>.

Montana is served by NorthWestern Energy, which is a publicly traded, investor-owned utility. <https://www.northwesternenergy.com/about-us>. For example, NorthWestern Energy has a 30% ownership interest in Colstrip Unit 4 in Montana, which uses sub-bituminous coal. <https://www.sec.gov/ix?doc=/Archives/edgar/data/73088/000007308822000019/nwe-20211231.htm> at 13. NorthWestern states that stricter carbon limitations by governmental bodies “has the potential to limit or curtail our operations, including the burning of fossil fuels at our coal-

fired power plants.” *Id.* at 21. Investors imposing this separate from government regulation would logically have the same effect.

South Carolina is served by several publicly traded utilities or subsidiaries of those utilities. Consumers in South Carolina would be harmed if their costs went up because of substitution to more expensive energy sources.

South Dakota and Nebraska are served by MidAmerican Energy Co., which is a subsidiary of Berkshire Hathaway Energy. <https://www.brkenenergy.com/our-businesses/midamerican-energy-company>. As discussed above, Vanguard supported climate disclosure for certain of Berkshire’s subsidiaries.

As discussed in Part III, below, the groups Vanguard joined (despite Vanguard’s specific commitments to the Commission) aim to shift global electricity production from natural gas and coal from approximately 67% of global electricity to approximately 0%. This will undoubtedly affect the cost and reliability of energy supplies.

In addition, the States that the Attorneys General represent are themselves consumers of energy, and decisions by utility companies can affect the reliable and affordable supply of energy that the States themselves consume, which creates a pecuniary interest in this matter.¹⁴ These direct and substantial interests will not be adequately protected without the intervention of the States through their Attorneys General. On top of this, participation by the States through their Attorneys General is in the public interest.¹⁵ Because the Attorneys General are elected officials who regularly take actions involving consumer protection and competition, they bring an important consumer-protection perspective. For these reasons, intervention is in the public interest, and the

¹⁴ See 18 C.F.R. § 385.214(b)(2)(ii)(A)–(B).

¹⁵ 18 C.F.R. § 385.214(b)(2)(iii).

Commission should grant the Attorneys General on behalf of the States leave to intervene in this proceeding with full rights as a party.

III. Protest

Vanguard is not entitled to a blanket authorization to acquire substantial equity and voting power in utility companies. Under Section 203 of the FPA, a holding company such as Vanguard cannot acquire a security worth more than ten million dollars in a utility without prior authorization from the Commission.¹⁶ By regulation, upon receipt of an application, the Commission must determine whether the proposed transaction is “consistent with the public interest” in light of its possible effects on competition, rates, and regulation.¹⁷ Additionally, the Commission considers “whether the proposed transaction will result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”¹⁸

Vanguard procured the 2019 Authorization by persuading the Commission that its contemplated transactions would not adversely affect competition, rates, and regulation. The Commission’s decision to grant a blanket authorization was premised in part on Vanguard’s assurance that it would neither seek to “exercise any control over the day-to-day management or operations of any U.S. Traded Utility” nor invest “for the purpose of managing, controlling, or entering into business transactions with portfolio companies.”¹⁹ At the time, Vanguard also represented that it would not “have any role in the setting of rates by utilities;” that it would not take “any other actions affecting the prices at which power is transmitted or sold;” and that “there

¹⁶ 16 U.S.C. § 824b(a)(2).

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 *Id.* § 2.26(f).

¹⁹ 2019 Authorization, 168 FERC at ¶ 64,219–20.

would be no discrete impact on the cost structures of the issuer that might affect the development or setting of cost-based rates.”²⁰ Based on these same promises, Vanguard now requests that the Commission extend its blanket authorization for another three years.²¹

The Commission should not take Vanguard’s representations at face value, particularly in light of the company’s recent commitments to environmental activism. In 2021, Vanguard joined the Net Zero Asset Managers Alliance (“NZAM”)—a group of nearly three hundred asset managers who work together to “accelerate the transition towards global net zero emissions.”²² NZAM asset managers in general agree to “[w]ork in partnership with asset owner clients on decarbonisation goals;” to “[p]rioritise the achievement of real economy emissions reductions within the sectors and companies in which [it] invest[s];” and 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 sooner.”²³ Similarly, as a member of the Ceres Investor Network, Vanguard “collaborate[s] with investors around the world to accelerate action on climate change.”²⁴ According to the International Energy Agency’s Net Zero pathway, achieving net zero requires shifting global electricity production from natural gas and coal from approximately 67% of global electricity to approximately 0%.²⁵

By making net zero commitments, Vanguard necessarily abandoned its status as a passive investor in public utilities and adopted a motive consistent with managing the utility. These commitments, on their face, further suggest that Vanguard has already undertaken and is currently

²⁰ *Id.* ¶ 64,220.

²¹ Application at 22–23.

²² The Net Zero Asset Managers Initiative, *Signatories*, <https://www.netzeroassetmanagers.org/signatories/>.

²³ The Net Zero Asset Managers Initiative, *Commitment*, <https://www.netzeroassetmanagers.org/commitment/>.

²⁴ Ceres, *Join the Ceres Investor Network*, <https://www.ceres.org/networks/ceres-investor-network/join-ceres-investor-network>.

²⁵ https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf (A very small percentage of coal and natural gas generation on the order of 2-3% of global supply may be permitted in a net zero scenario provided carbon capture is utilized).

undertaking corresponding activities that may constitute attempts to manage utilities—the precise actions Vanguard represented in its 2019 application and its pending application that it would not take. This in turn raises doubt as to whether the other statutorily and regulatorily required factors in FERC's inquiry are met. Only a fuller record, a hearing, and thorough briefing from all interested parties can determine whether Vanguard's representations are valid.

By committing to use its financial power to accelerate “the goal of net zero greenhouse gas emissions by 2050 or sooner,”²⁶ Vanguard may have already violated the terms and conditions of the 2019 Authorization. Vanguard agreed that it would not hold or purchase securities for the *purpose* of managing or controlling portfolio utility companies. Yet Vanguard has promised in a different context that it is, in effect, doing exactly that. As a member of NZAM and Ceres, Vanguard pledges to use its voting power to pressure utility companies towards decarbonization. How could it do that without intending to manage the companies in its portfolio? Even if it has not taken steps in line with these commitments, Vanguard appears to have potentially breached the conditions of the 2019 Authorization by investing “for the purpose of managing” utility companies.²⁷ The possibility of this breach should warrant greater scrutiny of Vanguard’s holdings and management of portfolio companies. Consequently, the Commission should deny Vanguard’s 2022 application for blanket reauthorization, which asks FERC to ignore the conduct of a company with over \$8.5 trillion under management. Whether and to what extent Vanguard has breached the 2019 Authorization are questions that could be aired and investigated at a hearing in this proceeding.²⁸

²⁶ *The Net Zero Asset Managers Initiative*, <https://www.netzeroassetmanagers.org/>.

²⁷ See 2019 Authorization, 168 FERC at ¶ 64,219

²⁸ Vanguard’s lack of forthrightness and transparency about its environmental purposes should be concerning to the Commission given its recent efforts to promote candor in communications by regulated entities. See *Duty of Candor*, 180 FERC ¶ 61,052 (2022).

Moreover, Vanguard, pursuant to its environmental commitments, has taken actions through its stewardship, engagement, and proxy-voting strategies to control the day-to-day operations of its portfolio utility companies in violation of the 2019 Authorization. For example, in its own publications, Vanguard warns its portfolio companies that it will support shareholder proposals that require the pursuit of climate risk mitigation targets and disclosure of greenhouse gas emissions or other climate-related metrics.²⁹ Vanguard also engages companies in carbon-intensive industries to have “risk mitigation targets that are aligned with the Paris Agreement[] and disclosure of progress against those risk-mitigation targets.”³⁰ In 2019 alone, Vanguard had over 250 engagements with companies “in the top carbon-producing and carbon-consuming sectors” on their climate-risk strategies.³¹ We urge the Commission to audit Vanguard’s voting records and engagements with utility companies to determine the extent to which Vanguard has breached its promise that it would not seek to “exercise any control over the day-to-day management or operations” of utility companies.³²

So too, we are concerned that Vanguard’s actions with respect to influencing environmental corporate policy—especially in combination with the stated motives of BlackRock and State Street Global Advisors³³—will inflate the rates consumers and our States pay for electrical service.³⁴ As Commissioners Danly and Christie recently pointed out, the Commission

²⁹ The Vanguard Group, Inc., *Vanguard Investment Stewardship Insights* 1 (June 2020), https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/perspectives-and-commentary/ISCLRG_062020.pdf.

³⁰ The Vanguard Group, Inc., *Vanguard’s Approach to Climate Change*, <https://corporate.vanguard.com/content/corporatesite/us/en/corp/climate-change.html>.

³¹ *Vanguard Investment Stewardship Insights*, *supra* note 19.

³² See 2019 Authorization, 168 FERC at ¶ 64,220.

³³ BlackRock, for many of the same reasons as set forth in this protest, has likely breached the terms and conditions of the various blanket authorizations that the Commission has granted to the company. See *BlackRock, Inc.*, 179 FERC ¶ 61,049. We therefore respectfully recommend that the Commission audit BlackRock to determine whether it is in compliance with the authorizing conditions.

³⁴ See, e.g., Jude Clemente, *ESG and The Dangerous Structural Increase in the Price of Oil*, FORBES (Feb. 13, 2022), <https://www.forbes.com/sites/judeclemente/2022/02/13/esg-and-the-dangerous-structural-increase-in-the-price-of-oil/?sh=728544b4757b>.

should not “rubber stamp requests for blanket authorizations”³⁵ where Vanguard cannot assure the Commission that its meddling in companies’ environmental agendas will not affect the “prices at which power is transmitted or sold” and/or “affect the development or setting of cost-based rates.”³⁶ Vanguard’s environmental mandates impose costs on its portfolio companies, and it is highly plausible that those costs are passed on to consumers directly or indirectly by hampering access to capital or foreclosing certain revenue-generating opportunities. A holding company of Vanguard’s size and influence should not be overlooked; to do so would be an abdication of the Commission’s statutory duty to safeguard the energy markets.

Finally, we note that in joining NZAM and Ceres, Vanguard has engaged (and promises 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% and 20% ownership limits imposed by the 2019 Authorization and the Office of Energy Market Regulations’ nine-month extension order.³⁷ If these three companies can cause public companies regulated by FERC to act in tandem to achieve certain political goals (that do not promote the efficiency and fairness of the energy markets), then it appears the ownership limits are completely toothless. We ask the Commission to investigate this apparent circumvention, consider these factors in relation to Vanguard’s application, and initiate a hearing.

³⁵ Joint Statement of James P. Danly & Mark C. Christie, *The Vanguard Group, Inc.*, Docket No. EC19-57-001 (Aug. 11, 2022).

³⁶ See 2019 Authorization, 168 FERC at ¶ 64,220.

³⁷ *The Vanguard Group, Inc.*, 180 FERC ¶ 62,065 (2022).

IV. Conclusion

For the foregoing reasons, the Attorneys General of Indiana, Utah, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Ohio, South Carolina, South Dakota, and Texas request that the Commission grant our motion to intervene for the purpose of protesting and permit the States to participate in this proceeding with full rights as parties thereto.

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 28, 2022.

/s/ Melissa A. Holyoak

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