

October 20, 2023

Chair Lina M. Khan  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan,

On June 26, 2023, Northern Indiana Public Service Company (NIPSCO)—a utility with 483,000 captive electric customers (and an additional 835,000 captive gas customers)—filed an application with the Federal Energy Regulatory Commission (FERC) for authorization under Section 203 of the Federal Power Act to sell 19.9% equity interest to private equity titan Blackstone Inc. for \$2.15 billion and control over two of NIPSCO’s board seats.<sup>1</sup>

Section 203 only authorizes such acquisitions if FERC “finds that the proposed transaction will be consistent with the public interest”,<sup>2</sup> with the Commission’s regulations prohibiting “any adverse effect on competition, rates, or regulation”.<sup>3</sup>

Blackstone already controls one seat on the board of another utility with captive customers, FirstEnergy (filled by Blackstone’s Sean T. Klimczak), and FirstEnergy’s new CEO Brian X. Tierney came directly from Blackstone.<sup>4</sup>

We informed FERC that allowing Blackstone executives to serve simultaneously on the board of directors of NIPSCO and FirstEnergy appears to violate Section 8 of the Clayton Act,<sup>5</sup> and therefore violates the public interest. We asked FERC to require Blackstone to disclose all companies where Blackstone executives serve on the board of directors, in order to assess whether the proposed transaction is consistent with the public interest and with federal anti-trust statutes.<sup>6</sup>

Yesterday, FERC issued an order approving the transaction, dismissing our protest, noting that its “jurisdiction does not extend to the enforcement of the Clayton Act.”<sup>7</sup>

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<sup>1</sup> [www.citizen.org/wp-content/uploads/BlackstoneNipsco1.pdf](http://www.citizen.org/wp-content/uploads/BlackstoneNipsco1.pdf)

<sup>2</sup> 16 USC § 824b(a)(4).

<sup>3</sup> 18 CFR Part 33.

<sup>4</sup> [www.citizen.org/wp-content/uploads/BlackstoneNipsco1.pdf](http://www.citizen.org/wp-content/uploads/BlackstoneNipsco1.pdf)

<sup>5</sup> 15 USC § 19(a).

<sup>6</sup> [www.citizen.org/article/blackstone-nisource-firstenergy-clayton-act/](http://www.citizen.org/article/blackstone-nisource-firstenergy-clayton-act/)

<sup>7</sup> *Order Authorizing Disposition of Jurisdictional Facilities*, at ¶28, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_num=20231019-3133](https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20231019-3133)



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In light of FERC's misguided belief that it is unable to enforce federal law, we ask the FTC to enforce the Clayton Act to prevent Blackstone from holding simultaneous control of board seats on FirstEnergy and NIPSCO.

Respectfully submitted,

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