

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Northern Indiana Public Service Company LLC  
Dunns Bridge Solar Center LLC  
Indiana Crossroads Wind Farm LLC  
Meadow Lake Solar Park LLC  
Rosewater Wind Farm LLC

Docket No. EC23-99

**Motion to Intervene of Citizens Action Coalition, and Joint Protest of Public  
Citizen and Citizens Action Coalition**

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 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 the Commission “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>

NIPSCO seeks expedited review, requesting an order approving the transaction by August 10, 2023. The Commission must reject the request for expedited review and set the matter for hearing, as the transaction is designed to exploit Indiana’s just-enacted statute granting NIPSCO and other Indiana utilities a *right of first refusal* to build transmission lines approved by MISO that will unjustly and unreasonably raise rates for consumers,<sup>4</sup> and therefore violates the public interest. In addition, the Commission must scrutinize the transaction’s impact on competition, as it would result in Blackstone executives serving on the board of at least four different FERC-jurisdictional utilities. Finally, the applicants must clarify the affiliation between various Blackstone entities.

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<sup>1</sup> NIPSCO’s parent company is NiSource, Inc.

<sup>2</sup> 16 USC § 824b(a)(4).

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

<sup>4</sup> Public Law 145, signed into law by Governor Eric Holcomb on May 1, 2023,  
<https://iga.in.gov/legislative/2023/bills/house/1420/details>

## **Motion to Intervene of Citizens Action Coalition<sup>5</sup>**

Established in 1974, Citizens Action Coalition has advocated on behalf of Hoosiers on issues regarding energy policy, utility reform, health care, pollution prevention, and family farms.<sup>6</sup> In order to achieve the objective to protect consumers in Indiana, CAC's activities include performing research, carrying out public education campaigns, organizing citizens, creating public awareness, lobbying legislators, intervening in utility cases before the Indiana Utility Regulatory Commission, and litigating when necessary.

### **Joint Protest**

Blackstone is the world's largest private equity firm, with a sprawling financial empire that extends throughout nearly every facet of the U.S. economy. Blackstone is owned and controlled by its CEO Stephen Schwarzman, who is far and away America's highest paid CEO, with personal compensation as CEO of \$253 million last year alone.<sup>7</sup>

Blackstone paid a significant, above-market premium for the NIPSCO stake, "one of the richest ever for a regulated utility", with a "phenomenal" 32.5x price-to-earnings multiple.<sup>8</sup> Now, Mr. Schwarzman is a very savvy businessman, so the only reason he would agree to overpay for 19.9% of NIPSCO is if the plan is to exploit a monopoly franchise to extract higher rates from consumers. And that is exactly what the entire Blackstone-NiSource deal is designed to achieve: take advantage of the newly passed Indiana ROFR law to lock consumers into unjust and unreasonable rates. It is important to note that Indiana's new anti-competitive law is mentioned nowhere in the application—an important fact that NiSource and Blackstone did not want on the record in this proceeding. Indiana's decision to abandon its consumers does not allow FERC to

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<sup>5</sup> Public Citizen previously intervened June 28, 2023.

<sup>6</sup> [www.citact.org](http://www.citact.org)

<sup>7</sup> Theo Francis, "Meet the CEOs Who Pull In More Than \$100 Million a Year," July 4, 2023, [www.wsj.com/articles/meet-the-ceos-who-pull-in-more-than-100-million-a-year-8409afe0](https://www.wsj.com/articles/meet-the-ceos-who-pull-in-more-than-100-million-a-year-8409afe0)

<sup>8</sup> Darren Sweeney, "NiSource deal's 'phenomenal price' indicates strong interest in utility stakes," June 23, 2023, [www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/nisource-deal-s-phenomenal-price-indicates-strong-interest-in-utility-stakes-76276355](https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/nisource-deal-s-phenomenal-price-indicates-strong-interest-in-utility-stakes-76276355)

ignore its 88-year old Congressional mandate to protect consumers from transactions that violate the public interest.

Absent FERC action, Blackstone will extract its acquisition premium from consumers not only within the NIPSCO footprint but also across MISO north through higher rates, with the help from Indiana’s anticompetitive legislation. As such, the Commission must set the matter for hearing to investigate the intersection between anti-consumer state legislation that increases FERC jurisdictional rates and the windfall Blackstone’s investors seek to collect at the expense of consumers.

It is apparent that NIPSCO’s ability to collect rates that are not reflective of a competitive market, a classic hallmark of market power, had a direct impact on the price of the transaction for which approval is sought. NiSource’s Vice President marveled that “the implied value for NIPSCO nearly equates to the total NiSource market capitalization, despite only comprising approximately 50% of the economic value of the full NiSource operating platform.”<sup>9</sup> Why? Because weeks before the announced transaction—encouraged by NIPSCO’s lobbying—the Indiana legislature passed an incumbent transmission development preference law that guarantees NIPSCO ownership of all future transmission development in its current footprint without subjecting NIPSCO to rate reducing competition. When compared to competed projects, NIPSCO’s transmission rates are substantially above prevailing competitive rates: NIPSCO’s rates are based on a 10.52% ROE, with a 58% equity in its capital structure, versus a competitive project with a 9.8% ROE and equity making up 45% of its capital structure.<sup>10</sup>

The ability to demand above competitive rates is the hallmark of market power. The connection between the transaction and transmission is not speculative either; NIPSCO itself makes the connection:

*An order by this date will allow Applicants to consummate the Proposed Transaction as soon as possible, thereby allowing NIPSCO to utilize the infusion of capital to support its transmission and generation business strategy. For*

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<sup>9</sup> *Id.*, quoting NiSource Executive Vice President and CFO Shawn Anderson.

<sup>10</sup> Ethan Howland, “Industrial groups urge FERC to reject incentives for \$280M in NIPSCO transmission projects,” June 8, 2023, [www.utilitydive.com/news/ferc-nipSCO-transmission-incentives-ls-power-republic-miso/652420/](http://www.utilitydive.com/news/ferc-nipSCO-transmission-incentives-ls-power-republic-miso/652420/)

*example, NIPSCO has been selected<sup>11</sup> to develop a portion of Project 15 and all of Project 16, two Multi-Value Projects that were approved by the Midcontinent Independent System Operator, Inc. (“MISO”) Board for inclusion in Tranche 1 of MISO’s Long Range Transmission Planning (“LRTP”) initiative and included in MISO’s 2021 Transmission Expansion Plan. **NIPSCO is also hopeful that the MISO Board will approve significant additional transmission projects for NIPSCO to develop as part of Tranche 2 of MISO’s LRTP.** Moreover, NIPSCO has been executing a long-term strategy to transition from coal to renewable generation resources.<sup>6</sup> Accordingly, expedited action on this Application will enable NIPSCO to deploy this new capital to fund the transformation of its generation fleet and its substantial transmission investments as soon as possible.<sup>12</sup>*

The Commission must disallow the proposed transaction because its entire design is to unlawfully increase rates for consumers, violating the public interest.

### **The Commission must scrutinize the transaction’s effect of Blackstone’s control over boards of directors**

Blackstone’s proposed acquisition of 19.9% of NIPSCO would entitle Blackstone to control two seats on the NiSource board of directors. 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>13</sup> Blackstone is an equity investor in Cheniere Energy, which owns both the Sabine Pass and Corpus Christi LNG export terminals, with Blackstone’s Matthew Runkle serving on its board.<sup>14</sup> Blackstone also controls two seats on the board of a separate company Cheniere Energy Partners—Blackstone executives Chris Dell’Amore and Matthew Runkle both serve on the board—which controls the Sabine Pass LNG export terminal and other gas infrastructure. The Commission must scrutinize the transaction’s impact on competition, as it would result in Blackstone executives serving on the board of at least four different FERC-jurisdictional utilities, which may be detrimental to competition.

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<sup>11</sup> Although NIPSCO asserts that it was “selected” to develop two tranche 1 projects, there was no “selection” process. Instead NIPSCO was assigned the two referenced projects by MISO without consideration or alternative developers. MISO made this declaration because the projects qualify as upgrades under MISO’s tariff, which is inaccurate regarding entirely new transmission facilities reflected in Projects 15 and 16.

<sup>12</sup> Application at 2-3, emphasis added.

<sup>13</sup> <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=99C33453-5C44-Co63-93BD-876CDF500000>

<sup>14</sup> [www.citizen.org/wp-content/uploads/CorpusChristiLNGProtest.pdf](http://www.citizen.org/wp-content/uploads/CorpusChristiLNGProtest.pdf)

## **Affiliation clarification is needed**

Exhibit I of the Application (*Agreement for Proposed Transaction*) is the Purchase and Sale Agreement between NiSource and Blackstone. Section 10.17 states, in part: “no portfolio company of any investment fund affiliated with or advised by The Blackstone Group Inc. or Blackstone Infrastructure Partners L.P. shall be deemed to be an “Affiliate” of the Investor (excluding the Investor’s Subsidiaries) and (ii) no investment fund affiliated with or advised by The Blackstone Group Inc. shall be deemed an “Affiliate” of the Investor.” We are concerned that this language improperly exempts entities controlled by and affiliated with Blackstone from being subject to Commission oversight.

Respectfully submitted,

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