UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Jersey Central Power & Light Docket Nos. ER10-1451-006

Ohio Edison Company ER10-1467-007

The Toledo Edison Company ER10-1468-007

The Cleveland Electric Illuminating Company ER10-1469-007

Pennsylvania Power Company ER10-1473-006

Metropolitan Edison Company ER10-1474-006

Pennsylvania Electric Company ER10-1478-008

Monongahela Power Company ER10-2687-006

The Potomac Edison Company ER10-2688-009

West Penn Power Company ER10-2689-009

Green Valley Hydro, LLC ER10-2728-008

Allegheny Energy Supply Company, LLC ER12-273-002

[Not Consolidated]

**Motion of Public Citizen and Citizens Utility Board of Ohio For Expedited Action To Determine Carl Icahn and Blackstone Are Affiliates of FirstEnergy**

A recent Commission order establishes new precedent on affiliation of investors that have officers on a utility’s board of directors, which has direct impact on this proceeding.

The Commission’s October 20, 2022 *Order on Notice of Change In Status re Evergy Kansas Central, Inc. et al* determined that a hedge fund that owns less than 10% of the utility’s voting shares is deemed affiliated with the utility because the “investor’s own officer or director” serves on the utility’s board of directors.[[1]](#footnote-1)

As has been demonstrated exhaustively in these and other proceedings, both Blackstone and affiliates of Carl Icahn each control less than 10% of FirstEnergy’s voting shares but have their own officers on the utility’s board of directors.

The voting status of Carl Icahn’s two officers on FirstEnergy’s board of directors is immaterial to the Commission determining that Carl Icahn and his affiliates must be deemed to be affiliated with FirstEnergy. As the Commission concluded in *Evergy*, “Board membership confers rights, privileges, and access to non-public information, including information on commercial strategy and operations.”[[2]](#footnote-2) These rights convey to Carl Icahn’s officers regardless of whether they are currently able to vote or not. In fact, regardless of whether Icahn’s two officers on FirstEnergy’s board of directors having voting authority yet, they are active participants in all board actions―including the active search by the board for a new CEO.[[3]](#footnote-3) As has been reported: “For billionaire investor Carl Icahn, 4 percent of a company isn’t just a sizable stake. It’s a sledge hammer and a crowbar, combined.”[[4]](#footnote-4)

In light of Blackstone and Carl Icahn officers playing an active role in selecting FirstEnergy’s next CEO, we request expedited action for the Commission to determine that both Blackstone and Carl Icahn and his affiliates are affiliated with FirstEnergy Corp.

Respectfully submitted,

Tyson Slocum, Energy Program Director Tom Bullock, Executive Director

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1. At 44 and 45, 181 FERC ¶ 61,044, Docket Nos. ER20-67-001, ER20-113-001 and ER20-116-001, https://elibrary.ferc.gov/eLibrary/filelist?accession\_num=20221020-3091 [↑](#footnote-ref-1)
2. At 45. [↑](#footnote-ref-2)
3. www.firstenergycorp.com/newsroom/news\_articles/fe-announces-ceo-transition.html [↑](#footnote-ref-3)
4. Brandon Bailey and Elise Ackerman, “Canny and ruthless, Icahn lives to win,” *The Mercury News*, May 24, 2008, www.mercurynews.com/2008/05/24/canny-and-ruthless-icahn-lives-to-win/ [↑](#footnote-ref-4)