

131 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

BlackRock, Inc.
and Its Affiliated Investment Management
Companies and Applicant Funds

Docket No. EC10-40-000

ORDER GRANTING AUTHORIZATIONS TO ACQUIRE SECURITIES UNDER
SECTION 203(A)(2) OF THE FEDERAL POWER ACT

(Issued April 23, 2010)

1. BlackRock, Inc. (BlackRock) and its Affiliated Investment Companies and Applicant Funds (collectively Applicants),¹ filed an application under to section 203(a)(2) of the Federal Power Act (FPA)² requesting:

¹ BlackRock's affiliated investment companies and applicant funds are as follows: (i) BlackRock's investment management subsidiaries (BR Management Subsidiaries); (ii) the investment funds managed by BR Management Subsidiaries (BR Funds); (iii) BlackRock Institutional Trust Company, N.A. (BR Trust), a United States (U.S.) bank; (iv) BR Trust's wholly-owned investment management subsidiary, BlackRock Fund Advisors (BRT Advisors); (v) the investment funds indirectly managed by BR Trust (BRT Non-Collective Funds); (vi) the collective funds managed by BR Trust (BRT Collective Funds); (vii) the other onshore and offshore investment funds managed by BR Trust (BRT Private Funds and together with BRT Non-Collective Funds and BRT Collective Funds, BRT Funds); (viii) the foreign investment affiliates of BR Trust (BRT Foreign Affiliates and together with BR Trust, BRT Advisors, and BR Management Subsidiaries, Investment Management Companies); and (ix) the investment funds managed by the BRT Foreign Affiliates (BRT Affiliate Funds and together with BR Funds and BRT Funds, Applicant Funds). Applicants are listed in Attachments 1-7 of the application.

² 16 U.S.C. § 824b (2006).

- (A) approval of certain indirect acquisitions of utility voting securities that resulted from BlackRock's recent acquisition of BR Trust, BRT Advisors, BRT Foreign Affiliates, and certain other companies by BlackRock (such acquisition, BGI Acquisition) or a determination that such approval is not required; and
- (B) blanket authorizations for certain prospective acquisitions of utility voting securities.

2. In this order we grant the application, subject to certain conditions and limitations discussed below.

I. Background

3. BlackRock is a publicly traded investment management firm that provides investment management-related services through subsidiaries to more than 2,000 mutual funds and other investment funds and to approximately 6,000 investment accounts (Investment Accounts). These services include the purchase, sale, and voting of voting securities on behalf of such investment funds and Investment Accounts, including the voting securities of public utilities and utility holding companies. Applicants state that they engage only in investment management and related services and that none of them owns any physical utility assets in the U.S., is in an energy-related business, or is a public utility under the FPA or an electric utility company under the Public Utility Holding Company Act of 2005.

4. On December 1, 2009, BlackRock purchased BR Trust, BRT Advisors, BRT Foreign Affiliates and certain other entities from Barclays Bank PLC (Barclays Bank) in return for a payment of \$6.6 billion in cash and the issuance to Barclays Bank of common and preferred stock of BlackRock (BGI Acquisition).

5. Applicants state that at the time of the closing of the BGI Acquisition, they did not believe that the transaction required Commission approval under sections 203(a)(1) or 203(a)(2) of the FPA. They state that they were aware that prior to closing, BR Trust, BRT Advisors, and BRT Foreign Affiliates exercised voting rights on behalf of the BRT Funds and BRT Affiliate Funds with respect to 10 percent or more of the voting securities of two U.S. public utility holding companies.³ Applicants also were aware that

³ Prior to the BGI Acquisition, BR Trust and BRT Advisors exercised voting rights on behalf of the BRT Funds with respect to 9.77 percent of the UGI Corporation's (UGI's) voting securities, while BRT Foreign Affiliates exercised voting rights on behalf of BRT Affiliate Funds with respect to 1.06 percent of UGI's voting securities. In addition, BR Trust and BRT Advisors exercised voting rights on behalf of the BRT Funds with respect to 10.21 percent of the Black Hills Corporation's (Black Hills) voting
(continued...)

the combination of voting rights from the closing of the BGI Acquisition would result in BlackRock indirectly exercising voting rights with respect to 10 percent or more of the voting securities of another U.S. utility holding company.⁴ Applicants assert that neither of these facts by itself required them to obtain approval under section 203 with respect to the BGI Acquisition because, as they interpret the statute and Commission policy (1) FPA section 203(a)(1) did not apply to the indirect acquisition of the voting securities of the three utility holding companies (referred to in this order as Threshold Utilities) because the entities in question were publicly traded and voting rights with respect to their voting securities were effectively being acquired in a secondary market transaction;⁵ and (2) FPA approval under section 203(a)(2) was not thought to be necessary because BlackRock did not appear to be a holding company for purposes of section 203(a)(2), although it would become one as a result of the BGI Acquisition.

6. BlackRock states, however, that approximately three weeks after closing the BGI Acquisition, BlackRock discovered that it apparently was a holding company for the purposes of FPA section 203(a)(2) prior to closing. Specifically, immediately prior to closing, BlackRock indirectly exercised through the BR Management Subsidiaries voting rights with respect to approximately 13.7 percent of the voting securities of Clipper Windpower PLC (Clipper). Clipper is a British manufacturer of wind turbines whose stock is traded on the London Stock Exchange's Alternative Investment Market. It also is the indirect owner of a 2.5 megawatt (MW) wind-powered test facility in Medicine

securities while BRT Foreign Affiliates exercised voting rights on behalf of BRT Affiliate Funds with respect to 0.12 percent of Black Hills' voting securities. UGI and Black Hills are both electric utility holding companies. The holdings in UGI and Black Hills of BR Trust and BRT Advisors were acquired under the blanket authorization set forth in 18 C.F.R. § 33.1(c)(9) (2009). As a result of the BGI Acquisition and ordinary share sell downs, BlackRock, through the Investment Management Companies, currently indirectly exercises voting rights with respect to approximately 10.70 percent of UGI's and approximately 10.50 percent of Black Hills' voting securities.

⁴ Prior to the closing of the BGI Acquisition, BlackRock through the BR Management Subsidiaries exercised voting rights with respect to 7.97 percent of the voting securities of Consol Energy, Inc. (Consol) and BR Trust, BRT Advisors, and BRT Foreign Affiliates exercised voting rights with respect to 4.66 percent of Consol's voting securities. Currently, BlackRock indirectly exercises voting rights through the Investment Management Companies with respect to 12.42 percent of Consol's voting securities. Consol is a coal company that Applicants state appears to be a holding company for purposes of FPA section 203(a)(2) by virtue of ownership interests in a joint venture that owns an electric generating facility.

⁵ Application at 11.

Bow, Wyoming, a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978. Clipper is thus a holding company for the purposes of FPA section 203(a)(2). BlackRock states that, by virtue of its indirect ownership of Clipper stock, BlackRock also was a holding company prior to closing of the BGI Acquisition.

7. As explained in greater detail below, Applicants maintain that while it could be argued that the BGI Acquisition required approval under FPA section 203(a)(2), it appears that, under established Commission precedent, such approval was not required. Accordingly, Applicants request that the Commission either (i) decline to approve the BGI Acquisition because it did not require approval under section 203(a)(2); or (ii) approve the BGI Acquisition without sanction, including allowing the Investment Management Companies to reacquire voting rights that were delegated to an independent fiduciary, as described below.

II. Notice of Filing

8. Notice of the application was published in the *Federal Register*, 75 FR 5310 (2010), with interventions and protests due on or before February 10, 2010. NRG Energy, Inc. filed a timely motion to intervene.

III. Discussion

A. Procedural Issues

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, NRG Energy, Inc.'s timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Applicability of Section 203(a)(2) to BGI Acquisition

1. Applicants' Analysis

10. Applicants argue that the BGI Acquisition does not require approval under section 203(a)(2). They maintain that the Commission has definitively ruled that securities acquisitions require approval under FPA section 203(a)(2) only when they are direct acquisitions by holding companies of the securities of public utilities or holding companies, and not indirect acquisitions by a holding company's non-holding company

subsidiaries, unless such indirect acquisitions are engaged in as a subterfuge for achieving control while attempting to avoid Commission jurisdiction.⁶

11. Applicants state that while the agreement for the BGI Acquisition was entered into between BlackRock and Barclays Bank, “the corporate acquisitions involved in the BGI Acquisition were actually accomplished by non-holding company subsidiaries of BlackRock.”⁷ Specifically, all of the Barclays Global Investors entities that were acquired in the BGI Acquisition became subsidiaries of non-holding company subsidiaries of BlackRock. Applicants further argue that the parties entered into the BGI Acquisition “to achieve a consolidation of financial management firms,” not to control utilities.⁸ Applicants argue that the identity of contracting parties would seem unimportant for the purposes of the rule announced in *Goldman Sachs I*, given that the subsidiaries in *Goldman Sachs I* were subject to the complete control of their parent company.

12. BlackRock maintains that if section 203(a)(2) applies to the BGI Acquisition, there are substantial mitigating circumstances that excuse BlackRock’s failure to obtain prior Commission approval. Prior to closing, BlackRock states that it undertook substantial due diligence to identify any holdings of public utility and utility holding company voting securities. BlackRock and Barclays Global Investors both catalogued their percentage holdings of the voting securities of energy companies, but Clipper did not appear on the resulting list because the searches that were conducted did not include companies traded on foreign exchanges. Clipper also does not appear on the Commission’s list of entities having market-based rate authority or its list of regulated entities, and it has never made filings under the Public Utility Holding Company Act of 2005. Applicants state that Clipper was discovered only by chance several weeks after the BGI Acquisition closed. They also state that upon discovering that Clipper is a holding company, BlackRock promptly took precautionary steps to cause all voting rights with respect to Clipper and the other U.S. utility holding companies in which it indirectly holds a 10 percent or greater voting interest to be delegated to an independent fiduciary.

⁶ Applicants reference *Goldman Sachs Group, Inc.*, 114 FERC ¶ 61,118, at P 14-15 (2006) (*Goldman Sachs I*), order on reh’g 115 FERC ¶ 61,303 (2006), *Supplemental Policy Statement* at P 58 n.48; *Horizon Asset Management, Inc.*, 125 FERC ¶ 61,209, at P 33 and 61 (2008).

⁷ Application at 14.

⁸ *Id.* at 15.

2. Commission Determination

13. We reject Applicants' contention that the BGI Acquisition was not subject to section 203(a)(2).⁹ While Applicants state that "the corporate acquisitions involved in the BGI Acquisition were actually accomplished by non-holding company subsidiaries of BlackRock,"¹⁰ the stock purchase agreement attached as Exhibit I to the application identifies only BlackRock as the "Buyer."¹¹ No subsidiary of BlackRock is included as a party to the stock purchase agreement.¹² Moreover, as noted, a portion of the consideration given in the transaction consisted of common and preferred stock of BlackRock. It thus is unclear what Applicants mean when they state that the transaction was "actually accomplished by non-holding company subsidiaries of BlackRock," given that no such subsidiary was a party to the transaction. We conclude from the record that the subsidiaries in question simply received the securities acquired from Barclays Bank as a contribution from BlackRock at or immediately following closing or that they were interposed in the transaction structure prior to closing for the convenience of BlackRock. In any event, a securities acquisition by a holding company is not exempt from section 203(a)(2) simply because its non-holding company subsidiaries become the ultimate holders of the securities acquired, where the facts and circumstances indicated that the parent holding company is, in fact, the acquirer. Under Applicants' interpretation, any holding company could avoid section 203(a)(2) simply by interposing a non-utility subsidiary between itself and the entity whose securities are acquired.

14. The facts presented in *Goldman Sachs I* were quite different. There, certain existing non-holding company subsidiaries of Goldman Sachs Group, Inc. (Goldman Sachs), in particular its investment management subsidiaries, sought assurances that

⁹ We note that, while Applicants describe the transaction as undertaken "to achieve a consolidation of financial management firms," they do not explain why, given the holding company status of BlackRock, BR Trust, BRT Advisors and BRT Foreign Affiliates and the fact that BlackRock acquired a 100 percent interest in the latter three companies, the transaction did not also involve a consolidation of holding companies for purposes of section 203(a)(2). We do not, however, need to consider that issue, given our analysis here.

¹⁰ See n.6 *supra*.

¹¹ See section 2.1(a) of the Stock Purchase Agreement.

¹² In this regard, although section 10.3 of the stock purchase agreement permits the Buyer (that is, BlackRock) to assign its rights under the agreement to one or more of its affiliates, any such assignment does not relieve Buyer of any of its obligations thereunder.

purchases of utility securities in the ordinary course of their investment advisory business as well as in connection with proprietary trading activity would not be attributed to Goldman Sachs for purposes of section 203(a)(2). The record in that proceeding did not indicate that Goldman Sachs itself was a party to or otherwise directly involved in any of the transactions described in the application. Here, in contrast, the BGI Acquisition involved a negotiated business combination, and, as already noted above, BlackRock and BlackRock alone was identified as the “Buyer” under the transaction documents. Applicants thus have not shown how the actions of the subsidiaries that received securities at or after the BGI Acquisition closed are in any way analogous to the trading activities of the non-holding company subsidiaries of Goldman Sachs.

C. Applicants’ Request for Blanket Authorizations

15. Applicants seek blanket authorizations under FPA section 203(a)(2) for the Investment Management Companies to acquire and vote, on behalf of the Applicant Funds and the Investment Accounts, and for the Applicant Funds and Investment Accounts to hold, the voting securities of any public utility, electric utility company, transmitting utility, or holding company in a holding company system that includes an electric utility company or transmitting utility (collectively Utilities), as those terms are used in section 203(a)(2), subject to the following conditions:¹³

1. the Investment Management Companies will only acquire the voting securities of Utilities whose voting securities (including American Depositary Receipts) are traded on U.S. public exchanges, including the New York Stock Exchange, the American Stock Exchange and the NASDAQ (U.S. Traded Utilities);
2. Applicants will not, on a collective basis, own or control more than 20 percent of the voting securities of any individual U.S. Traded Utility, and no individual Applicant Fund or Investment Account (including those controlled by BR Trust) will acquire ownership of 10 percent or more of the voting shares of any U.S. Traded Utility;

¹³ Applicants state that the acquisitions for which blanket authorizations are requested in the application may not in all cases require Commission authorization under FPA section 203(a)(2). They also acknowledge that in some cases the blanket authorizations contained in the Commission’s regulations will apply to them. However, they state that in seeking the requested blanket authorizations they are not seeking any determinations on jurisdictional issues.

3. Applicants will not exercise control over the day-to-day management or operations of any U.S. Traded Utility whose voting securities are acquired under the requested authorizations, except pursuant to separate authorizations under section 203 of the FPA;
4. all acquisitions of U.S. Traded Utility voting securities under the requested authorizations will be made in a fiduciary capacity on behalf of the Applicant Funds or Investment Accounts;
5. each Investment Management Company (other than BVR Trust) will maintain the status of a registered investment advisor under the Investment Advisers Act of 1940 (Advisers Act) or similar status under the laws of a foreign country as explained below;
6. BlackRock and the Investment Management Companies (with respect to the Applicant Funds and the Investment Accounts¹⁴) will maintain the status of beneficial owners eligible to file Schedule 13G with the Securities and Exchange Commission (SEC) pursuant to the Securities Exchange Act of 1934 (1934 Act) with respect to the acquisition, holding, and voting of more than five percent of any class of voting securities of any U.S. Traded Utility;
7. consistent with the provisions of 18 C.F.R. § 33.1(c)(4) (2009), at the time an Investment Management Subsidiary files a Schedule 13G with the SEC in connection with the acquisition of U.S. Traded Utility securities, it will file a copy of that schedule with the Commission; and

¹⁴ Applicants state that the Investment Accounts are not legal entities and therefore are not Schedule 13 filers. However, the Investment Management Companies will make Schedule 13 filings with respect to holdings in the Investment Accounts and holdings by the Applicant Funds.

8. Applicants will file additional reports with the Commission and meet other conditions as described below.¹⁵

16. Applicants also request that these blanket authorizations be extended to other investment management subsidiaries and investment funds that BlackRock directly or indirectly manages or controls in the future, on the condition that those entities meet applicable conditions of this application, as explained below.

17. Applicants state that the requested blanket authorizations are consistent with Commission precedent because the factual situation, conditions proposed, and the blanket authorizations themselves are substantially similar to those the Commission considered in a series of recent cases involving investments in the utility industry by financial services firms.¹⁶ Applicants state that, like the applicants in the *Financial Services Cases*, BlackRock, the Investment Management Companies, the Applicant Funds, and the owners of the Investment Accounts will be passive investors when subject to the conditions proposed in the application. Applicants also state that the proposed conditions provide multiple layers of regulatory protection that will ensure that Applicants are unable to exercise control over U.S. Traded Utilities.

¹⁵ Applicants also request all necessary authorizations for intermediate holding companies between BlackRock and the Investment Management Companies indirectly to acquire and vote voting securities as a consequence of the direct acquisition and voting of securities by the Investment Management Companies. See Application at n.26. To the extent that these intermediate holding companies, as described, do not directly acquire and hold any voting securities of U.S. Traded Utilities, it does not appear that any authorization is required under section 203(a)(2).

¹⁶ *Capital Research & Mgmt Co.*, 116 FERC ¶ 61,267 (2006), *modified*, 124 FERC ¶ 62,225 (2008) (*CMRC*); *T. Rowe Price Group, Inc.*, 119 FERC ¶ 62,048 (2007) (*T. Rowe Price*); *Ecofin Holdings Limited*, 120 FERC ¶ 61,189 (2007), *modified*, 127 FERC ¶ 62,244 (2009) (*Ecofin*); *The Goldman Sachs Group, Inc.*, 121 FERC ¶ 61,059 (2007), *order on clarification*, 122 FERC ¶ 61,005 (2008) (*Goldman Sachs II*); *Morgan Stanley*, 121 FERC ¶ 61,060 (2007), *order on clarification*, 122 FERC ¶ 61,094 (2008) (*Morgan Stanley*); *Legg Mason*, 121 FERC ¶ 61,061 (2007) (*Legg Mason*); *Horizon Asset Management, Inc.*, 125 FERC ¶ 61,209 (2008) (*Horizon*); *Franklin Resources, Inc.*, 126 FERC ¶ 61,250, *order on reh'g*, 127 FERC ¶ 61,224 (2009) (*Franklin Resources*). *CMRC*, *T. Rowe Price*, *Ecofin*, *Goldman Sachs II*, *Morgan Stanley*, *Legg Mason*, *Horizon*, and *Franklin Resources* are referred to hereafter collectively as the *Financial Services Cases*.

18. Applicants request that the Commission grant the blanket authorizations for a period of three years.

19. Applicants state that under the blanket authorizations they will be unable to exercise control over any U.S. Traded Utilities. They maintain that the *Financial Services Cases* stand broadly for the proposition that an applicant's commitment to maintain eligibility to file a Schedule 13G under the 1934 Act with respect to utility voting securities effectively ensures that it cannot exercise control when buttressed with other sufficient regulatory conditions.

20. Applicants argue that, aside from their commitment not to exercise control over U.S. Traded Utilities, the principal protection against the exercise of such control under their proposal is the commitment to maintain eligibility to file Schedule 13G with respect to reportable investments in such Utilities under the 1934 Act. Applicants state that an institutional investor is not eligible to file Schedule 13G unless it can certify that the securities in question have been acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer.¹⁷

21. Applicants state that the SEC has regularly sanctioned violations of Schedule 13G filing requirements. They maintain that while the SEC has declined to provide a bright line definition of "control" for purposes of Schedule 13G eligibility, it has provided guidance that makes clear that any activity designed to replace the issuing company's management or influence the day-to-day commercial conduct of its business constitutes an attempt at control and therefore renders an acquiring person ineligible to file a Schedule 13G.

22. Applicants state that the obligation not to assert control that results from filing a Schedule 13G is buttressed by a series of other regulatory requirements. They state that as a result of BR Trust's status as a national bank, it and BRT Advisors are subject to additional and comprehensive oversight by the Office of the Comptroller of the Currency (OCC) to ensure compliance with their fiduciary duties. As a result, BR Trust established a number of standards and procedures to monitor its compliance with laws and regulations that may affect their fiduciary activities. OCC regularly examines BR Trust for compliance and frequently places personnel on-site to monitor compliance.

¹⁷ Applicants note that if the intentions of a Schedule 13G filer change, it is obligated both to notify the SEC of this fact and to wait for the "cooling off" period before attempting to exercise control of the issuer. Schedule 13G filers are expressly prohibited from voting or directing the voting of the subject securities or acquiring beneficial ownership of any equity securities of the issuer or any person controlling the issuer during the period between the change in the filer's investment purpose and 10-days after its Schedule 13D filing is made. See 17 C.F.R. § 240.13d-1(e) (2009).

Applicants maintain that this ensures that BR Trust and BRT Advisors cannot exercise control over Utilities for their own benefit.

23. Applicants state that, other than BR Trust, each of the Investment Management Companies organized under U.S. law (as well as certain of the foreign Investment Management Companies)¹⁸ is a registered investment adviser under the Advisers Act, and each of them is obligated to maintain extensive compliance procedures under the 1934 Act. Section 203(e)(6) of the Advisers Act requires the SEC to impose sanctions on any investment adviser found to have violated the Securities Act of 1933, the 1934 Act, the Investment Company Act of 1940 (1940 Act) or rules or regulations under any of these statutes or who fails to exercise reasonable supervision to prevent violations of them. As a result, the SEC requires an investment adviser to (1) adopt and implement written policies and procedures; (2) review annually the adequacy and the effectiveness of implementation of the policies and procedures; and (3) designate a person who will be responsible for administering the policies and procedures.

24. Applicants state that in the case of the Investment Management Companies that are registered investment advisers, Applicants' commitment to file Schedule 13G is supplemented by regular SEC audits and requirements for internal policies and procedures that ensure compliance with those filings. Applicants also note that the Commission has suggested that the ability of the Commission and the SEC to detect violations of the statutes they administer is enhanced by the requirement that investment advisers must maintain detailed books and records of securities and trades and holdings on behalf of their clients for a period of not less than five years.

25. Applicants state that the Investment Management Companies that are not organized under U.S. law, and that are not otherwise registered investment advisers, will be subject to requirements comparable to those imposed under the Advisers Act. All of the Investment Management Companies will maintain the status of a beneficial owner that is eligible to file Schedule 13G for the voting securities of any U.S. Traded Utility. As a condition of Schedule 13G filing in which a non-U.S. Investment Management Company that is not a registered adviser joins, the SEC requires the filing official to certify that the applicable foreign regulatory scheme is substantially comparable to the regulatory scheme applicable to a functionally equivalent U.S. institution.¹⁹

¹⁸ Applicants state that the BRT Foreign Affiliates and certain of the BR Management Subsidiaries are the only Investment Management Companies that are not organized under U.S. law.

¹⁹ See 17 C.F.R. § 240.13d-102 (2009).

26. Applicants argue that the status of the BRT Non-Collective Funds and the large majority of BR Funds as mutual funds (collectively Mutual Funds) provides further protection against the exercise of control over U.S. Traded Utilities. Under the 1940 Act, each of the Mutual Funds is a “registered investment company,” and a majority of their board members or trustees must be independent of BlackRock and the Investment Management Companies. SEC rules also require each mutual fund subject to the 1940 Act to adopt and implement policies and procedures reasonably designed to prevent violations of federal securities law, including policies and procedures that provide for oversight of compliance by each fund’s key service providers.²⁰

27. Applicants state that aside from the regulatory requirements discussed above that apply to the Investment Management Companies and Applicant Funds, various contractual obligations and undertakings are in place that further help to ensure that Applicants will be unable, and not have the incentive, to exercise control over utilities whose voting securities are acquired under the requested blanket authorizations:

1. all the acquisitions of securities made under the blanket authorizations will be securities of U.S. Traded Utilities, which (i) ensures that the acquisitions will be driven by public market considerations rather than a privately held Utility’s ownership of particular physical assets; and (ii) restricts the authorized acquisitions to Utilities traded on U.S. public exchanges, which will ensure the visibility of such acquisitions;
2. all the acquisitions of securities made under the blanket authorizations will be for the account of Applicant Funds or Investment Accounts and, subject to limited exceptions,²¹ not for the direct or indirect benefit of BlackRock or any entity in which it holds an ownership interest, meaning that the benefits to the Investment Management Companies that they hypothetically might

²⁰ *See id.* § 270.28a-1.

²¹ Applicants state that the Investment Management Companies own a limited number of shares of some Applicant Funds that were purchased in order to provide those funds with nominal capital for initial organizational purposes or to provide sufficient capitalization to allow the fund to create a diversified portfolio prior to or at such time as shares of such fund were offered to the public. The Investment Management Companies generally seek to sell such shares within three years to the extent permitted by market conditions.

achieve from gaining control over a U.S. Traded Utility are largely removed; and

3. all acquisitions and voting of voting securities by the Investment Management Companies will be made in a fiduciary capacity on behalf of the Applicant Funds or the Investment Accounts, which obligates the Investment Management Companies to act in the interests of the Applicant Funds or the Investment Accounts.

D. Standard of Review Under Section 203

28. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.²² Section 203 also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."²³ The Commission's regulations establish verification and informational requirements for applicants seeking a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.²⁴

29. As discussed below, we find that the BGI Acquisition has no adverse effect on competition, rates, or regulation and does not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. We therefore approve the BGI Acquisition (including allowing the Investment Management Companies to reacquire the voting rights that have been delegated to an independent fiduciary) on a prospective basis from the date of this order. In addition, we find that the proposed blanket authorizations, subject to the terms and conditions and for the purposes set forth in the application, and with the reporting requirements modified as discussed below, will have no adverse effect on competition, rates, or regulation and will not result in inappropriate cross-subsidization or pledge or

²² See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement Order No. 592 (Merger Policy Statement)*; FERC Stats. & Regs. ¶ 31,044, at 30,111 (1996).

²³ 16 U.S.C. § 824b(a)(4) (2000).

²⁴ 18 C.F.R. § 33.2(j) (2009).

encumbrance of utility assets. We therefore grant the proposed blanket authorizations for three years from the date of this order as discussed below.

1. Effect on Competition

a. Applicants' Analysis

30. Applicants argue that the BGI Acquisition and the requested blanket authorizations had and will have no adverse effect on competition. They state that in order to have any effect on competition, the Investment Management Companies, the Applicant Funds, or owners of the Investment Accounts would have to acquire some form of control over a U.S. Traded Utility. Applicants argue that none of these companies, funds, or accounts has exercised any control over the Threshold Utilities, and they will be expressly limited under the proposed conditions from purchasing or holding securities with the effect, or for the purpose, of exercising control or management of the U.S. Traded Utilities. Applicants state that the BGI Acquisition and the blanket authorizations proposed do not and will not convey any ability to control generation or transmission facilities, and they therefore pose no competitive issues.

b. Commission Determination

31. We find that, with a modification of a reporting requirement Applicants proposed, and with additional reporting requirements, the BGI Acquisition and the requested blanket authorizations will not have an adverse effect on competition.

32. Our order is premised, in part, on our understanding that investment advisors subject to the Advisers Act must maintain detailed books and records of securities trades and holdings on behalf of their clients for a period of not less than five years.²⁵ In addition, SEC regulations require registered investment companies subject to regulation under the 1940 Act to maintain detailed records of securities transactions and portfolio holdings permanently.²⁶ Our approval is based on the condition that Applicants will continue to follow SEC record keeping requirements as they currently exist or may change from time to time. Failure to follow those requirements will constitute a violation of the requirements of this order.

33. Applicants have provided sufficient layers of protection for the Commission to conclude that the Investment Management Companies, the Applicant Funds, and owners of the Investment Accounts will not be able to exercise control of U.S. Traded Utilities.

²⁵ See 17 C.F.R. § 275.204-2 (2009).

²⁶ See *id.* §§ 270.31a-1 and 270.31a-2.

Applicants have committed, among other things (1) not to exercise any control over day-to-day management or operations of any U.S. Traded Utility; (2) not to own or control on a collective basis more than 20 percent of the voting securities of any U.S. Traded Utility; (3) not to acquire ownership of 10 percent or more of the voting securities of any U.S. Traded Utility by an individual Applicant Fund or Investment Account; (4) that each of the Investment Management Companies (other than BR Trust) will maintain the status of a registered investment adviser under the Advisers Act; and (5) that BlackRock and the Investment Management Companies (with respect to the Applicant Funds and the Investment Accounts) will maintain the status of beneficial owners eligible to file Schedule 13G with respect to holdings of U.S. Traded Utilities manages. These and other commitments; the restrictions, policies, and procedures required by US law that Applicants describe; and other proposed conditions will ensure that the Investment Management Companies, the Applicant Funds, and owners of the Investment Accounts cannot exercise control over any utility. This conclusion is based, in part, on the premise that Applicants' proposed reporting requirements are modified as discussed below.

34. Applicants pledge that when an Investment Management Company files a Schedule 13G with the SEC in connection with the acquisition of U.S. Traded Utility securities, it will file a copy of that schedule with the Commission. However, this does not include other information involving Schedule 13 filings that the Commission required in the *Financial Services Cases*.²⁷ Therefore, this reporting requirement is modified to read:

Investment Management Companies shall file with the Commission, for informational purposes, at the same time and on the same basis as filled with the SEC, the Schedule 13G filings, and any amendments thereto, made with the SEC that are relevant to the authorizations granted in this order. Investment Management Companies also shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits that are related to investments in U.S. Traded Utilities. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

35. Each of the *Financial Services Cases* has a quarterly filing requirement that, along with the Schedule 13 filing requirements, enables the Commission to monitor the levels of an applicant's public utility security acquisitions and holdings. We therefore condition the approval of the requested blanket authorizations upon Applicants filing with the

²⁷ See, e.g., *Franklin Resources, Inc., order on reh'g*, 127 FERC ¶ 61,224, at P 9 (2009). The *Financial Services Cases* are identified in n.15 *infra*.

Commission, for informational purposes, a quarterly report of Applicants' holdings of U.S. Traded Utilities stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares. This filing should be made within 45 days of the end of each calendar quarter. The reporting of holdings is subject to a *de minimis* threshold of one percent of the outstanding shares of any U.S. Traded Utility.

2. Effect on Rates

a. Applicants' Analysis

36. Applicants state that the BGI Acquisition and the blanket authorizations that they request do not and will not have any adverse effect on wholesale or retail electric rates. They argue that because the Investment Management Companies, the Applicant Funds, and owners of the Investment Accounts do not have and will not acquire control over the Threshold Utilities or any U.S. Traded Utility, they will have no role in setting of rates by such entities. Applicants also argue that rates will not be affected regardless of whether the utility in which Investment Management Companies have invested, or seek to invest, sells electricity or provides transmission services at market-based or cost-based rates. They further state that because there will be no effect on market power in any relevant generation or transmission market, the acquisitions will not affect the market price at which electricity is sold. Applicants state that because the acquisitions have been and will be made in public markets, there can be no discrete impact on the cost structures of the issuer that might affect the development of cost-based rates.

b. Commission Determination

37. We agree with Applicants that the BGI Acquisition and the proposed blanket authorizations will not have an adverse effect on rates because the Investment Management Companies, the Applicant Funds, and owners of the Investment Accounts have not and will not acquire control over any U.S. Traded Utility, and they thus will have no role in setting rates. We also agree with Applicants that neither the BGI Acquisition nor the proposed blanket authorizations will affect how rates are set. We find that the BGI Acquisition and the proposed blanket authorizations have no adverse effect on rates.

3. Effect on Regulation

a. Applicants' Analysis

38. Applicants argue that the BGI Acquisition and the blanket authorizations they request do not have and will not have any impact on the regulation of the Threshold Utilities or other utilities either by the Commission or by state regulatory authorities. The acquisition of utility securities by the Investment Management Companies on behalf of the Applicant Funds and Investment Accounts has not resulted and will not result in any

change in activities or corporate structure of a utility that might affect its jurisdictional status under either federal or state law.

b. Commission Determination

39. We agree with Applicants that nothing in the BGI Acquisition or the proposed blanket authorizations will affect the jurisdictional status of any public utilities or how the public utilities are regulated. We find that the BGI Acquisition and the proposed blanket authorizations have no adverse effect on regulation.

4. Cross-subsidization and Encumbrance of Utility Assets

a. Applicants' Analysis

40. Applicants state that the BGI Acquisition and the blanket authorizations they request have not and will not harm the public interest, nor will the securities acquisitions approved thereby result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. The Investment Management Companies, the Applicant Funds, and owners of the Investment Accounts are and will be non-controlling investors whose ownership of Utility securities will be subject to the conditions described above. Applicants thus conclude that they will have no ability to cause or direct the utilities in which they have an interest to cross-subsidize their non-utility associate companies improperly.

41. Applicants also verify that based on facts and circumstances known to them or that are reasonably foreseeable, the BGI Acquisition and the proposed blanket authorizations did not and will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate companies that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

b. Commission Determination

42. We agree with Applicants that the BGI Acquisition and the proposed blanket authorizations will not allow them to cause or direct utilities in which they have an

interest to cross-subsidize their non-utility associate companies improperly. We find that the BGI Acquisition and the proposed blanket authorizations will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.

E. Application of Blanket Authorizations to New Entities

1. Applicants Request

43. Applicants request that any new investment management subsidiary controlled by BlackRock receive the benefits of the blanket authorizations they seek, provided that:

1. the new investment management subsidiary meets all of the conditions that apply to the Investment Management Companies; and
2. BlackRock files or causes to be filed a notice of any new Investment Management Company that is to receive the benefit of the blanket authorizations within 45 days of the end of the calendar quarter in which it is intended that the authorizations will apply to it, including (i) the name, functions, and regulatory safeguards that apply to the entity; and (ii) a reiteration of Applicants' commitment not to acquire securities that will result in the transfer of control over a public utility.

44. In addition, Applicants request that investment funds not identified in the application, but that BlackRock indirectly manages also receive the benefits of the blanket authorizations. Applicants request that BlackRock be able to sponsor and manage new investment funds that invest in U.S. Traded Utilities, on the condition that those funds meet all of the conditions that apply to the Applicant Funds, but without any requirement that the funds be identified to the Commission pursuant in a separate filing. Applicants maintain that although previous applicants in the *Financial Services Cases* have committed to identify such new funds to the Commission, it does not appear that this should be mandatory.

45. Applicants state that the Commission has recognized the impracticability of requiring applicants to identify individual investment accounts that hold securities of U.S. Traded Utilities. Any benefit that has come from requiring the identification of owners of U.S. Traded Utility voting securities has, according to Applicants, been qualified at best.

46. Applicants also state that a requirement to identify by name new investment funds would be burdensome and would present BlackRock with a difficult task. BlackRock

manages more than 2000 Applicant Funds, and it frequently sponsors new funds and terminates existing funds.

47. Finally, Applicants state that regardless of whether new investment funds are identified by name, they are still subject to Schedule 13G filing requirements. BlackRock and the Investment Management Companies must file a Schedule 13G with respect to the acquisition and holding of more than 5 percent of any class of voting security of any U.S. Traded Utility. All such filings will be under Schedule 13G, and thus the filing entities face the threat of civil and criminal penalty if they attempt to exercise control over U.S. Traded Utilities.

2. Commission Determination

48. If the new entities that are not identified in the application are identical in all material respects to the Investment Management Companies and, as a result, are subject to the same restrictions that apply to the Investment Management Companies, those new entities are granted the benefit of the blanket authorizations that we approved above, under the conditions and reporting requirement specified there.²⁸

49. In addition, this order is premised, in part, on our understanding that Applicants' representation that "the ownership of U.S. Traded Utility voting securities by any single Applicant Fund will in all cases be less than the 10 percent threshold"²⁹ means that (unless further authority has been obtained from the Commission) each investment fund that BlackRock or its affiliates manages, including any newly-created investment fund that was not named in the application and that has delegated voting power to an Investment Management Company, will be subject to the commitment that it will not acquire 10 percent or more of the voting securities of any U.S. Traded Utility. This requirement is necessary to permit oversight of compliance where funds are not identified by name because it requires compliance by all individual funds that BlackRock and its affiliates manage. We therefore grant, without an additional filing requirement, the request that BlackRock be able to sponsor and manage new investment funds, not identified in the application, that invest in U.S. Traded Utilities, on the condition that such funds meet all of the conditions applicable to the Applicant Funds, and we grant such new investment funds the benefit of the requested blanket authorizations.

²⁸ See, *Morgan Stanley*, 121 FERC ¶ 61,060 at P 47; *Goldman Sachs II*, 121 FERC ¶ 61,059 at P 42-43.

²⁹ Application at p. 34.

F. Other Considerations

50. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Commission finds that the BGI Acquisition requires approval under FPA section 203(a)(2). The BGI Acquisition (including allowing the Investment Management Companies to reacquire the voting rights that have been delegated to an independent fiduciary) is approved on a prospective basis from the date of this order.

(B) The proposed blanket authorizations are approved for a period of three years from the date of this order, subject to the terms and conditions and for the purposes set forth in the application and as discussed in the body of this order and further subject to the quarterly filing requirements discussed in the body of this order.

(C) The request that any new investment management subsidiary receive the benefits of the blanket authorizations is approved subject to the conditions and filing requirements set forth in the application and discussed in the body of this order.

(D) The request that investment funds not identified in the application but managed indirectly by BlackRock also receive the benefits of the blanket authorizations is approved, subject to the conditions set forth in this order.

(E) Investment Management Companies shall file with the Commission, for informational purposes, at the same time and on the same basis as filled with the SEC, the Schedule 13G filings, and any amendments thereto, made with the SEC that are relevant to the authorizations granted in this order. Investment Management Companies also shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits that are related to investments in U.S. Traded Utilities. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(F) Applicants shall file with the Commission, for informational purposes, within 45 days of the end of each calendar quarter, a quarterly report of Applicants' holdings of U.S. Traded Utilities stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares.

(G) Applicants shall retain the records of their transactions concerning securities of U.S. Traded Utilities as required under the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(H) Applicants shall file a notice of any new Investment Management Company that is to receive the benefit of the blanket authorizations within 45 days of the end of the calendar quarter during which it is intended that such authorizations apply to it, including (i) the name, functions and regulatory safeguards applicable to the entity; and (ii) a reiteration of Applicants commitment not to acquire securities that will result in the transfer of control over a public utility.

(I) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions, and requirements that the authorizations granted in this order are based on and whether they are in compliance with Commission rules, regulations, and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(J) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission.

(K) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(L) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(M) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting Applicants' requests and specifying the terms and conditions under which the blanket authorizations are set forth.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.