COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF	)	
THE VANGUARD GROUP, INC. FOR A	)	Case No.
DECLARATORY ORDER REGARDING	)	2020-00209
INVESTMENT FUND OWNERSHIP	)	

VERIFIED APPLICATION

The Vanguard Group, Inc. ("Vanguard Group"), by counsel, pursuant to 807 KAR 5:001 Section 19 and other applicable law, hereby requests a declaration by the Kentucky Public Service Commission ("Commission") confirming the Vanguard Group and its related entities (collectively, "Vanguard") need not obtain Commission approval under KRS 278.020 (governing, *inter alia*, acquisition of ownership and control of jurisdictional utilities) for investments made under the circumstances and subject to the conditions described herein. In support of this Application, the Vanguard Group respectfully states as follows.

Introduction

1. Vanguard is one of the world's largest mutual fund complexes, offering a substantial selection of mutual funds, exchange traded funds ("ETFs"), advice and related services. As discussed in detail below, the larger Vanguard complex includes hundreds of separate funds, each with its own separate group of shareholders, portfolio of securities and individual investment mandate. Many of these funds—independently, on behalf of their respective shareholders, and exclusively for

investment purposes—have at various times acquired and sold, as well as currently hold, publicly-traded voting securities of Kentucky jurisdictional utilities or companies with Kentucky jurisdictional utility subsidiaries—*e.g.*, Duke Energy Corp. (Duke Energy Kentucky, Inc.), American Electric Power Company, Inc. (Kentucky Power Company), PPL Corporation (Kentucky Utilities Company / Louisville Gas & Electric Company), NiSource (Columbia Gas of Kentucky, Inc.), and Atmos Energy Corporation.[1] Out of an abundance of caution, the Vanguard Group seeks confirmation in this proceeding that these investments, when made within stated maximums and subject to multiple internal and external limitations which prevent the exercise of control by Vanguard or its related entities, do not require Commission approval as acquisitions of utility control under KRS 278.020.

Background

2. The Vanguard Group was incorporated in Pennsylvania on September 24, 1974, where it remains in good standing, and it is authorized to transact business in Kentucky. The Vanguard Group's mailing address is Vanguard, 100 Vanguard Blvd., Malvern, Pennsylvania 19355, and its electronic mail address for purposes of this proceeding is judy_l_gaines@vanguard.com.

3. The Vanguard Group is registered with the Securities and Exchange Commission (the "SEC") as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and as a transfer agent under the Securities

[1] Attached at Exhibit 1 is a table reflecting all of the Kentucky jurisdictional utilities/parent companies with voting securities held by one or more of the independent mutual funds that comprise the Vanguard complex as of June 30, 2020. This table also provides detail about the percentages of relevant outstanding voting securities for each utility/parent company at issue.

Exchange Act of 1934, as amended (the "Exchange Act"). The Vanguard Group is jointly owned and operated by more than 190 U.S. mutual funds (the "Vanguard Mutual Funds") organized into 34 Delaware statutory trusts (the "Vanguard Trusts"), each of which is a registered investment company under the Investment Company Act of 1940, as amended (the "1940 Act").

4. The Vanguard Group is governed by a 10-member board of directors, whose members also serve as members of the boards of trustees for the Vanguard Mutual Funds. Nine of the 10 board members are independent directors/trustees who are not employed by Vanguard or any Vanguard Mutual Fund. The Vanguard Group, together with its affiliates, provides the Vanguard Mutual Funds with corporate management, administrative, investment management and distribution services at cost.

5. Each of the individual Vanguard Mutual Funds is an independent legal U.S.-entity owned by a separate group of shareholders. Outside of the United States, Vanguard offers a number of non-U.S. registered funds in jurisdictions such as Australia, Canada, Ireland, the United Kingdom, and Hong Kong (together with the Vanguard Mutual Funds, the "Vanguard Funds").

Interests at Issue

6. As stated, the portfolios of numerous Vanguard Funds include voting securities of publicly-traded entities which directly or indirectly own and control Kentucky jurisdictional utilities (or, in the case of Atmos Energy Corporation, is a Kentucky jurisdictional utility). Each Vanguard Fund portfolio is maintained on

behalf of that fund's shareholders consistent with the requirements of the fund's established investment mandate(s).

7. The vast majority of Vanguard Funds are index funds, such that their holdings are a reflection of each respective fund's reference index (created and maintained by an independent third party) rather than an exercise of investment judgment.[2] Index funds purchase and maintain positions in securities in the approximate proportion that such securities are represented in each fund's respective index.

8. Conversely, far fewer Vanguard Funds are non-index funds, which are managed according to traditional methods of active investment management, involving the buying and selling of securities based on economic, financial and market analyses and investment judgment.

9. Vanguard serves as investment advisor for some of the Vanguard Funds (the "Vanguard Advised Funds"), but not others (the "Externally Advised Funds"). Vanguard Advised Funds include all of Vanguard's index funds, each of which is passively-managed by design. Vanguard does not serve as investment advisor for most non-index funds,[3] the vast majority of which instead are managed by independent, third-party investment advisors.

[2] Vanguard is credited with creating the first index fund available to individual investors and popularizing index funds generally.

[3] Vanguard, through its Quantitative Equity Group ("QEG"), provides investment advisory services for a small portion of these funds. QEG uses quantitative modeling to select securities.

10. No single Vanguard Fund, including both Vanguard Advised Funds and Externally Advised Funds, presently holds 3% or more of the voting securities of any publicly-traded utility or utilities holding company with operations in Kentucky.[4] No Vanguard Fund invests in coordination with Vanguard or any other Vanguard Funds, but rather invests in accordance with its individual investment objective as set forth in its prospectus and statement of additional information.

11. With respect to Vanguard Advised Funds, Vanguard has been granted investment discretion to select securities for purchase and sale on the fund's behalf. While Vanguard does not have voting authority over the portfolio securities of such funds, it is deemed a "beneficial owner" of those securities for purposes of the reporting requirements of the Exchange Act.[5]

12. With respect to Externally Advised Funds, a third-party investment advisor unaffiliated with Vanguard has been selected by the fund to provide investment advisory services. The external advisory firm also maintains proxy voting responsibilities with respect to securities within Externally Advised Funds, with functionally all power consequent to stock ownership delegated by the fund's board of trustees to the unrelated third party. Securities in Externally Advised Funds are not deemed under SEC rule to be beneficially owned by Vanguard because Vanguard does not, "through any contract, arrangement, understanding, relationship, or

[4] For a complete data, please see Exhibit 1 attached hereto.

[5] Pursuant to Rule 13d-3 of the Exchange Act, "a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) Investment power which includes the power to dispose, or to direct the disposition of, such security." 17 C.F.R. § 240.13d-3.

otherwise[,]" possess any voting or investment power with respect to the securities.[6] Vanguard lacks connection to the securities or any ability to exercise control over a portfolio company by virtue of an Externally Advised Fund's ownership of securities on behalf of fund shareholders.

13. In this proceeding, Vanguard seeks confirmation that, assuming the facts, rules, and commitments described herein:

i. a single Vanguard Advised Fund may acquire and hold up to a limit of less than 10% ownership of a Kentucky jurisdictional utility or Kentucky jurisdictional utility holding company's outstanding voting securities without resulting in a change in utility control requiring Commission approval;

ii. Vanguard may acquire and hold beneficial ownership up to 20% of relevant outstanding voting securities, in the aggregate across all Vanguard Advised Funds, without resulting in a change in utility control requiring Commission approval; and

iii. Securities held by Externally Advised Funds may be excluded from consideration when aggregating Vanguard Funds' portfolios for purposes of evaluating jurisdictional utility ownership and control or applying percentage limitations.

[6] 17 C.F.R. § 240.13d-3.

Discussion

Applicable Law

14. Kentucky statute, KRS 278.020, generally requires Commission approval before ownership or control of a jurisdictional utility may be acquired or transferred. The pertinent subsection states as follows:

> (7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

KRS 278.020(7) (emphasis added).

15. Also noteworthy is KRS 278.020(6), which states in pertinent part, "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission." Similar to its definition under KRS 278.020(7), "control" is defined for purposes of KRS 278.020(6) to mean "the power to direct the management or policies of a person through ownership, by contract, or otherwise."[7] Based on Commission precedent, it appears KRS 278.020(7) is the applicable subsection to the case *sub judice*, but to the extent necessary, Vanguard requests to confirm its activities are in full compliance with KRS 278.020.[8]

16. The precedent most relevant to this matter involves substantially similar relief sought from this Commission roughly four (4) years ago by T. Rowe Price Associates, Inc. ("TRP").[9] There, TRP requested a declaration that Commission approval was not required under KRS 278.020(6) (now (7)) for TRP's increase, from less than 10% to less than 20%, of its beneficial ownership of the outstanding shares of voting securities of NiSource, the indirect parent of Kentucky jurisdictional utility Columbia Gas of Kentucky, Inc. By Order entered March 14, 2016, the Commission

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[7] KRS 278.010(19).

[8] *See* Case No. 2015-00389, *Application of T. Rowe Price Associates, Inc. for a Declaratory Order Regarding the Acquisition of Common Stock*, Order (Ky. P.S.C. March 14, 2016); Case No. 91-232, *The Public Offering of ACC Corp. as it Affects Danbury Cellular Telephone Co.*, Order at 2 (Ky. P.S.C. July 26, 1991) ("No person or entity will own 10 percent of the voting securities of ACC as a result of the public offering and prior ownership of ACC common stock. Thus, the public offering cannot result in a transfer of ownership or control within the meaning of KRS 278.020[(6)] and [(7)]….")

[9] Case No. 2015-00389, *Application of T. Rowe Price Associates, Inc. for a Declaratory Order Regarding the Acquisition of Common Stock* (filed Nov. 25, 2015).

granted TRP's requested relief upon concluding that, while TRP's beneficial ownership levels exceeding 10% of voting securities did raise a rebuttable presumption of control, an increase in beneficial ownership to less than 20% of outstanding voting securities did "not in fact confer actual control."[10] This conclusion was based upon TRP's general investment policies and practices, necessary compliance with SEC rules, and commitments made to the Federal Energy Regulatory Commission ("FERC").[11] Further, TRP committed "that, if its investment policy changes and it seeks to acquire control or influence control of NiSource or Columbia Gas, [TRP] will provide notice to the Commission before taking action and will file an application for approval of the acquisition pursuant to KRS 278.020[(7)]."[12]

17. Similarly, investments by Vanguard Funds in the publicly-traded voting securities of Kentucky jurisdictional utilities or companies with Kentucky jurisdictional utility subsidiaries, as described herein, do not result in the acquisition or transfer of actual control of those companies. Like TRP, Vanguard is subject to extensive internal and external controls governing its activities, including securities regulation and enforcement by the SEC, oversight by the Federal Energy Regulatory Commission ("FERC"), internal policies and other relevant agreements. These controls, individually and collectively, reflect Vanguard's fundamental commitment to passive investing. Further, the protections in place prevent Vanguard and the Vanguard Funds from directly or indirectly possessing the power to direct or cause

[10] *Id.*, Order at 7 (Ky. P.S.C. Mach 14, 2016).
[11] *Id.*
[12] *Id.*

the direction of a Kentucky utility's management and policies. As a result, the limited investments described do not involve the direct or indirect acquisition of jurisdictional utilities; moreover, any presumption otherwise is rebutted by the actual absence of control accompanying the investments.

Nature of Investments

18. The Vanguard Funds are passive investors in the portfolio companies they own. The Vanguard Funds do not invest, individually or in the aggregate, to control or influence the day-to-day management or policies of any portfolio company. These facts are supported by, among other things, Vanguard's disclosure of the relevant holdings on SEC Schedule 13G.

19. Under SEC rule, any party who beneficially owns 5% or more of a class of equity securities must file either a Schedule 13G or Schedule 13D with the SEC, based in part on whether the party intends to act as a passive investor or whether the party intends to exercise control over the target company.[13] A Schedule 13G filer acquires securities in the ordinary course of business and not with the purpose or effect of changing or influencing control. A Schedule 13D filer, alternatively, acquires securities with the intention or purpose of controlling or influencing the target company's business. The relevant holdings of all Vanguard Advised Funds are disclosed on SEC Schedule 13G, not Schedule 13D, consistent with SEC rule.[14]

[13] 17 C.F.R. § 240.13d-l.

[14] Additionally, SEC rule generally restricts eligibility to file a Schedule 13G to those investors with beneficial ownership of less than 20% of an issuer's outstanding voting securities. Institutional investors, such as SEC-registered mutual funds and SEC-registered investment advisors under 17 C.F.R. § 240.13d-l.(b)(1), are not presumed to invest with the intent to control (and thus remain eligible to file a Schedule 13G) unless their beneficial ownership exceeds 25% of an issuer's outstanding voting

20. Vanguard and any Vanguard Fund are further prohibited from exercising control over Kentucky jurisdictional utilities as a consequence of commitments set forth in an applicable FERC order. On August 9, 2019, FERC granted a blanket authorization to Vanguard, pursuant to Section 203 of the Federal Power Act.[15] This blanket authorization permits the acquisition of voting securities of any publicly traded U.S. utility, up to either: (i) 20% ownership in aggregate by Vanguard; or (ii) 10% ownership by any individual Vanguard Fund (the "FERC Order").[16]

21. FERC incorporated certain commitments made by Vanguard into the FERC Order. Among those is a commitment that Vanguard will maintain its status as a beneficial owner of securities eligible to file SEC Schedule 13G. Because maintaining its eligibility as a Schedule 13G filer requires that Vanguard act as a passive investor, the FERC Order effectively prevents Vanguard from taking any actions with the intent or purpose of controlling any Kentucky jurisdictional utility (*e.g.*, appointing members to boards of directors, engaging in day-to-day management, or launching a proxy contest to influence a transaction).

22. Moreover, the Vanguard Mutual Funds' publicly-filed registration statements state that the funds do not seek to acquire, individually or collectively with any other Vanguard Fund(s), enough of a company's outstanding voting stock to

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securities. *See* 15 C.F.R. § 80a-2(a)(9). In any event, Vanguard does not seek or propose to beneficially own more than 20% of any relevant issuer's securities, in the aggregate across all Vanguard Advised Funds, for purposes of this proceeding.

[15] 16 U.S.C. § 824b (2012).

[16] 168 FERC ¶ 62,081 (Aug. 9, 2019) (a copy of which is attached hereto at Exhibit 2).

have control over management decisions.[17] These registration statements likewise state that Vanguard Funds do not invest for the purpose of controlling a company's management.[18] Vanguard is required to comply, both by internal policies and external regulation, with disclosures made in a Vanguard Fund's prospectus and statement of additional information. Fundamentally, an attempt to exercise control by a Vanguard Fund would be beyond the scope of its investment mandate, which requires that all investments be made exclusively for investment purposes and specifically without the purpose or effect of changing or influencing the control of a company.

23. All Vanguard Funds make investments exclusively with an expectation of resale and participation in the change in market value of the securities, the benefits of which inure solely to the Vanguard Funds and their respective shareholders.

24. Neither Vanguard nor any Vanguard Fund is in the business of operating or controlling the companies in which investments are made, nor are they permitted to do so in light of relevant internal and external controls.

25. Vanguard commits that if its investment policy changes and it seeks to acquire control or influence control of any Kentucky jurisdictional utility or Kentucky jurisdictional utility holding company, it will provide notice to the Commission before

[17] *See, e.g.*, Vanguard 500 Index Fund: Statement of Additional Information, at B-13 (Apr. 26, 2020), *available at* http://www.vanguard.com/pub/Pdf/sai040.pdf
[18] *Id.*

taking action and will file an application for approval of the acquisition pursuant to KRS 278.020(7).[19]

26. Consequently, any presumption of control under KRS 278.020 that may accompany Vanguard's aggregated beneficial ownership of relevant voting securities should be declared rebutted under the presented facts, stated maximums and governing controls.

Conclusion

27. Under the circumstances described, Vanguard and Vanguard Funds do not possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a Kentucky jurisdictional utility. This remains the case if an individual Vanguard Advised Fund acquires less than 10% (but no more) of a Kentucky jurisdictional utility or Kentucky jurisdictional utility holding company's outstanding voting securities. The same is true if Vanguard acquires beneficial ownership in the aggregate of no more than 20% of a relevant company's outstanding voting securities.

28. For the foregoing reasons, Vanguard requests a declaration from the Commission confirming that the Commission's jurisdiction over changes in utility control under KRS 278.020 is not triggered by the investment activity described herein, subject to Vanguard's continued adherence to the beneficial ownership percentage limitations, regulatory commitments, and other relevant policies described herein.

[19] This same commitment, which appears to simply require compliance with the statute, was made by TRP in Case No. 2015-00389.

This 6th day of July, 2020.

Respectfully submitted,

DINSMORE & SHOHL LLP

/s/ Edward T. Depp

Edward T. Depp
101 South Fifth Street, Suite 2500
Louisville, Kentucky 40202
E-mail: tip.depp@dinsmore.com
Phone: (502) 581-8000
Fax: (502) 585-2207

M. Evan Buckley
100 West Main Street, Suite 900
Lexington, Kentucky 40507
E-mail: evan.buckley@dinsmore.com
Phone: (859) 425-1000
Fax: (859) 425-1099

Counsel to The Vanguard Group, Inc.

VERIFICATION

STATE OF Pennsylvania)
)
COUNTY OF Chester)

I, Pauline C. Scalvino, Principal of The Vanguard Group, Inc., hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, formed after reasonable inquiry, on this the 1st day of July, 2020.

/s/ Pauline C. Scalvino
Pauline C. Scalvino, Principal

The foregoing Verification was signed, acknowledged and sworn to before me this 1st day of July, 2020, by Pauline C. Scalvino.

Susan L. Stapleton
NOTARY PUBLIC
Notary # 1159136
Commission expiration: 04/22/23

Commonwealth of Pennsylvania - Notary Seal
Susan L. Stapleton, Notary Public
Chester County
My commission expires April 22, 2023
Commission number 1159136
Member, Pennsylvania Association of Notaries

EXHIBIT 1 (REDACTED)

Publicly Traded Company	Kentucky Jurisdictional Utility	Highest Percentage Owned by any One Vanguard Fund	Percent of Outstanding Shares Beneficially Owned by Vanguard	Shares Held by Externally-Advised Funds
Atmos Energy	Atmos			
Duke Energy Corp.	Duke Energy Kentucky, Inc.			
NiSource Inc.	Columbia Gas of Kentucky, Inc.			
American Electric	Kentucky Power Company			
PPL Corporation	Kentucky Utilities Company			
PPL Corporation	Louisville Gas and Electric Company			
Century Aluminum	Century Aluminum Sebree, LLC			
Cimarex Energy Co.	Magnum Hunter Production, Inc.			
United Parcel Service	United Parcel Service			
Westlake Chemical	Westlake PVC Corporation			
As of 6/30/2020		REDACTED	REDACTED	REDACTED

Exhibit 2

168 FERC ¶ 62,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

The Vanguard Group, Inc. Docket No. EC19-57-000
Vanguard Global Advisors, LLC
Vanguard Asset Management, Ltd.
Vanguard Investments Australia Ltd.
Vanguard Fiduciary Trust Company
Affiliated Investment Companies and Applicant Funds

ORDER GRANTING BLANKET AUTHORIZATIONS

(Issued August 9, 2019)

On February 15, 2019, The Vanguard Group, Inc., (Vanguard Group), along with its advisory subsidiaries Vanguard Global Advisors, LLC, Vanguard Asset Management, Ltd., Vanguard Investments Australia Ltd., Vanguard Fiduciary Trust Company (Vanguard Group Subsidiaries), its 37 Affiliated Investment Companies, and its affiliated mutual funds and other investment funds (Applicant Funds) (together, Applicants) filed an application pursuant to section 203(a)(2) of the Federal Power Act (FPA)[1] requesting blanket authorizations to acquire under certain circumstances the voting securities of any individual publicly traded U.S. utility, either up to 20 percent ownership in aggregate by Applicants or up to 10 percent ownership by any individual Vanguard fund (Proposed Transaction).

Applicants state that Vanguard Group and its affiliates (collectively, Vanguard) are a leading mutual fund complex with approximately $5 trillion in assets under management. Applicants state that Vanguard s products include United States registered mutual funds, non-United States funds and collective investment trusts (all of which are included in the Applicant Funds). Applicants represent that Vanguard Group is wholly and jointly owned by 37 investment companies registered under the Investment Company Act of 1940, as amended.[2] Applicants state that Vanguard Group is registered as a

[1] 16 U.S.C. § 824b (2012).

[2] 15 U.S.C. § 80a-1, *et seq* (1940 Investment Company Act). The investment companies are listed in Application, Att. 1.

transfer agent under the Securities Exchange Act of 1934, as amended.[3] Applicants submit that Vanguard Group has no shareholders other than the 37 investment companies and is wholly and jointly owned by various investment companies. Applicants state that Vanguard Group and the Vanguard Group Subsidiaries manage and provide investment advisory services to the Applicant Funds.

Applicants state that Applicant Funds (through intermediaries, the Vanguard Mutual Funds) make investments in securities, including in utility securities, on behalf of their fund investors exclusively for investment purposes, and not for the purpose of managing, controlling, or entering into business transactions with portfolio companies (including any companies that own or control a publicly traded utility). Applicants divide the Applicant Funds into two broad categories: (1) funds that seek to track the performance of a specified third-party reference index, and are therefore passively managed because investment decisions are not based on Vanguard Group s investment judgment (Vanguard Index Funds); and (2) funds that are managed according to traditional methods of active investment management, involving the buying and selling of securities based on economic, financial and market analyses and investment judgment (Vanguard Active Funds). Applicants represent that Vanguard Group or a Vanguard Group Subsidiary acts as the investment adviser for all of the Vanguard Index Funds. According to Applicants, Vanguard Active Funds are primarily managed by unaffiliated, third-party investment managers.

Applicants state that the Vanguard Mutual Funds are each governed by a Board consisting of 11 members, whose members are also on the Board of Vanguard Group. Applicants state that 10 of the 11 members of each Board are independent trustees as defined in the 1940 Investment Company Act, who, apart from any personal investments they may choose to make as private individuals, have no affiliation with either Vanguard or the funds they oversee. Applicants state that the Vanguard Mutual Funds Boards retain voting authority with respect to the portfolio securities they own. Applicants represent that Vanguard Group otherwise administers the voting process on behalf of each of the Applicant Funds and votes the equity securities held by each fund pursuant to that fund s proxy voting procedures and guidelines.

Applicants request all necessary authorizations under FPA section 203(a)(2) for Vanguard Group and the Vanguard Group Subsidiaries to hold, to prospectively acquire, and to administer the voting process on behalf of the Affiliated Investment Companies and Applicant Funds with respect to the voting securities of any public utility, electric utility company, transmitting utility, or holding company in a holding company system that includes a transmitting utility, or an electric utility company as those terms are used in FPA section 203.

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[3] 15 U.S.C. § 78a, *et seq* (1934 Securities Exchange Act).

Applicants state that the requested authorizations would be subject to the following conditions:

> Pursuant to the requested authorizations, the Applicants will acquire only 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 (all such utilities, U.S. Traded Utilities).
>
> Pursuant to the requested authorizations, the Applicants will not acquire ownership or control in the aggregate of more than 20 percent of the voting securities of any individual U.S. Traded Utility. No individual Applicant Fund will acquire ownership of 10 percent or more of the voting securities of any U.S. Traded Utility.
>
> In any situation where the Applicants collectively own or control five percent or more of the voting securities of a U.S. Traded Utility, the required reporting entities will file Schedule 13Gs with the Securities and Exchange Commission (SEC) pursuant to the 1934 Securities Exchange Act and will remain eligible to file a Schedule 13G with respect to their beneficial ownership of the voting securities of such U.S. Traded Utility.[4]

In all cases, the Applicants commit not to exercise any control over the day-to-day management or operations of any U.S. Traded Utility whose voting securities are acquired pursuant to the authorizations requested in this application, except pursuant to separate authorizations under FPA section 203.

Applicants request that the Commission grant the blanket authorizations for a period of three years, consistent with Commission precedent. Applicants also request that any newly established Vanguard investment management company or investment fund receive the benefit of the blanket authorizations granted by the Commission pursuant to this application, on the condition that: (1) any such investment management company meets all of the conditions applicable to the Affiliated Investment Companies pursuant to this application; (2) any such investment fund meets all of the conditions applicable to the Applicant Funds pursuant to this application; and (3) Vanguard Group files a notice of any new entity that is to receive the benefit of blanket authorization

[4] SEC Schedule 13G is used to report ownership of stock which exceeds five percent of a company's total stock issue. Applicants note that under SEC rules the filer of Schedule 13G must have no intention (and its holdings and actions have no material effect) of changing or influencing the control of the issuer.

within 45 days after the end of the calendar quarter during which it is intended that such authorization shall have attached, including (a) the name, functions, and regulatory safeguards applicable to such entity, and (b) a reiteration of the Applicants commitment not to acquire securities that will result in the transfer of control over a public utility.

Applicants submit that acquisitions of the securities of utilities pursuant to the blanket authorizations will not have an adverse effect on competition. Applicants state that their proposed conditions preclude them from purchasing or holding securities with the effect or for the purpose of exercising control or management of a U.S. Traded Utility, and thus they will not have the ability to control any generation or transmission facilities. Applicants therefore maintain that any acquisition of securities authorized pursuant to this Application will not convey any ability to control generation or transmission facilities, directly or indirectly.

Applicants represent that the acquisitions of utility securities pursuant to the blanket authorizations will have no adverse effect on the rates of wholesale electric service customers. Applicants state that the utilities in which they seek to invest will be selling electricity or provide transmission services either at market-based or cost-based rates. Applicants maintain that they will not acquire control over the day-to-day activities of any utility; nor will they have any role in the setting of rates by such entities, or any other actions affecting the prices at which power is transmitted or sold. Further, because the acquisitions of utility securities will be made in public markets, there would be no discrete impact on the cost structures of the issuer that might affect the development or setting of cost-based rates.

Applicants state that the acquisition of utility securities pursuant to the blanket authorizations will have no adverse impact on regulation, because it will not result in any change in the activities or corporate structure of a utility that might affect its jurisdictional status under either federal or state law.

Applicants verify that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (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 company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on February 19, 2019, with comments, protests, or interventions due on or before March 8, 2019. None were filed.

Information and/or systems connected to the bulk power system involved in these transactions may be subject to reliability and cybersecurity 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 database, 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 cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission s ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company s books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[5] To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent

[5] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh g*, 111 FERC ¶ 61,413 (2005).

with the public interest and is authorized, subject to the following conditions:[6]

(1) The blanket authorizations are hereby granted for a period of three years, subject to a 20 percent limit on the acquisition in aggregate by Applicants and a limit of less than 10 percent of the outstanding voting securities of a public utility in any single fund, as discussed above.

(2) 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 costs, or any other matter whatsoever now pending or which may come before the Commission.

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

(4) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions and requirements upon which the authorizations are herein granted and with applicable 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.

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

(6) Applicants shall file with the Commission contemporaneous with filing at the SEC the Schedule 13G filings that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Applicants shall file with the Commission any comment letter or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(7) Applicants shall file with the Commission on a quarterly basis, within 45 days of the end of the quarter, a report listing their holdings of utility voting securities, stated

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[6] The conditions proposed by Applicants are the same as those accepted by the Commission in other blanket authorizations granted to financial institutions. *See, e.g.*, *Goldman Sachs*, 134 FERC ¶ 61,227 at P 14 (finding that investment managers acting as fiduciaries may acquire less than 20 percent of a public utility per Schedule 13 reporting group and less than 10 percent of the outstanding voting securities per individual investment fund or individually managed account).

in terms of the number of shares held and as a percentage of the outstanding shares.

(8) If a new entity is to be covered by these blanket authorizations, Applicants must provide notice in a report with the name, functions, and regulatory safeguards applicable to that entity, as well as a reiteration of Applicants commitment not to acquire securities that will result in a transfer of control of a public utility, on a quarterly basis, within 45 days of the end of the quarter.

(9) 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 the request and specifying the terms and conditions under which the blanket authorization is set forth in section 33.1(c)(5) of the Commission's regulations will be available to them**.**

This action is taken pursuant to the authority delegated to the Director, Office of Energy Market Regulation, under 18 C.F.R. § 375.307 (2018). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2018).

Anna V. Cochrane, Director
Office of Energy Market Regulation

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