

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Citizen, Inc.
and Citizens Action Coalition

v.

Docket No. EL21-2

CenterPoint Energy, Inc.
and its wholly-owned affiliate
Southern Indiana Gas and Electric Company

Answer of Public Citizen and Citizens Action Coalition

Public Citizen and Citizens Action Coalition ask the Commission to consider this answer under Rule 213 (18 CFR § 385.213), even though our answer is submitted beyond fifteen days. Elliott Management's role within CenterPoint Energy involves many complicated layers that take time to process and analyze.

The materials and explanations provided by CenterPoint—including the non-public confidentiality agreement between the utility and the hedge fund Elliott Management—further confirm our contention that Elliott Management be deemed an affiliate of CenterPoint Energy.

The facts demonstrate that Elliott Management is an activist investor that acquires a company's voting shares for the sole purpose of influencing management and investment decisions of companies that it targets. Elliott's takeover tactics consistently result in the placement of the hedge fund's preferred board members and major changes in the investment strategies of the target company—despite the fact that Elliott rarely acquires voting shares anywhere close to 10%. The hedge fund engages in a unique form of influence and control of publicly traded companies that evades regulatory review.

Elliott's use of non-public negotiations and agreements, combined with the hedge fund's ongoing efforts to sway management to pursue Elliott's preferred agenda, should render the hedge fund to be an affiliate of CenterPoint Energy.

An Elliott Management affiliate has a fuel-supply contract with CenterPoint

Elliott Management currently owns nearly 29 million shares, or 30%, of Peabody Energy.¹ CenterPoint Energy co-owns the Warrick 4 coal unit, with Alcoa. EIA-923 data shows that Peabody Energy supplies coal for the Warrick unit.² Determining affiliation is important for many reasons, including to ensure that transactions are conducted at arm's length.

CenterPoint is one of at least three FERC-jurisdictional utilities where Elliott Management has sway over management

Elliott Management has quietly established itself as one of the most powerful investors in the U.S. utility industry, as the hedge fund leverages its capital to successfully push for management and investment changes for at least three different utilities. In addition to CenterPoint Energy, Public Citizen chronicled in a protest last month that Elliott Management had appeared to obtain control over the public utility Evergy, Inc. in a manner very similar to its approach with CenterPoint, including the use of a non-public confidentiality agreement that conveys certain rights and privileges for Elliott that are unavailable to any other similarly-situated investor.³ On November 10, in response to news reports that were likely the result of leaks by Elliott Management, the hedge fund issued a statement urging Evergy to consent to an acquisition by NextEra.⁴

Just a few weeks ago, DTE Energy made a surprise announcement to divest its midstream gas assets. Coinciding with the announcement, Elliott Management endorsed the move, disclosing for the first time to the public that the hedge fund had a significant financial position within DTE Energy and had been engaged in non-public negotiations with the utility about the divestment for “several months”.⁵

¹ <https://finance.yahoo.com/quote/BTU/holders?p=BTU>

² www.eia.gov/electricity/data/eia923/

³ www.citizen.org/article/public-citizen-pushes-ferc-to-classify-elliott-management-as-affiliate-of-evergy-inc/

⁴ <https://news.yahoo.com/elliott-management-statement-regarding-evergy-133000982.html>

⁵ David French, “U.S. utility DTE Energy to spin off gas pipeline business,” *Reuters*, October 27, 2020, <https://in.reuters.com/article/us-dte-energy-divestiture-idINKBN27C2KW>

Elliott Management’s *modus operandi* of obtaining control of public utilities, involving lengthy non-public negotiations and agreements, has established the hedge fund as one of the most influential investors shaping U.S. utility management decisions, accomplishing this feat through the use of a deliberate strategy designed to evade regulatory oversight under the Federal Power Act.

[REDACTED]

First, the Commission should make public the confidentiality agreement between CenterPoint Energy and Elliott Management that was provided as Exhibit A in CenterPoint’s October 26 Answer. The CenterPoint Energy Answer asserts that “Respondents respectfully request privileged treatment of Exhibit A because it contains non-public, commercially sensitive commercial information”.⁶ But there is absolutely no “commercially sensitive commercial information” anywhere in this non-public agreement. [REDACTED]

[REDACTED]

Second, contrary to the Answer’s claim that such confidentiality agreements are “standard practice with any private placement equity investment,”⁷ [REDACTED]

[REDACTED]

⁶ At page 16.

⁷ Answer, at page 4.

[REDACTED]

Respectfully submitted

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