UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

DTE Electric Company Docket Nos. ER13-738-008

DTE Energy Trading, Inc. ER10-1186-011

DTE Energy Supply, LLC ER10-1329-011

DTE Garden Wind Farm, LLC ER11-2731-004

DTE Stoney Corners Wind Farm, LLC ER11-3097-012

St. Paul Cogeneration, LLC ER12-421-004

**Comment of Public Citizen, Inc.**

On May 14, various market-based rate subsidiaries of DTE Energy filed a notice of change in status reporting an addition of 462 MW of generation in MISO.

But the change in status fails to disclose DTE’s probable affiliation with Elliott Management, per 18 CFR § 35.42. Elliott Management’s involvement with DTE Energy, combined with non-public agreements Elliott Management has with at least two of DTE’s competitors and a fuel supply contract between DTE and an Elliott Management affiliate, raise serious anti-competitive concerns regarding DTE’s MBR authority.

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 material changes in the investment strategies of the target company—despite the fact that Elliott rarely acquires voting shares anywhere close to 10%.[[1]](#footnote-1) The hedge fund engages in a unique form of influence and control of publicly traded companies that evades regulatory review, including the use of non-public agreements and private negotiations with the target company’s management.

On October 27, 2020, Elliott Management announced that it owned “a significant interest in DTE Energy Co.” that it used to privately engage DTE’s CEO for “several months” to spin off its midstream gas operations into a separately listed company.[[2]](#footnote-2) DTE Energy recently reported “significant progress” towards this goal, with a target of separating the companies by the middle of 2021.[[3]](#footnote-3) Elliott Management’s clear influence over DTE’s business should render Elliott Management as an affiliate of DTE Energy.[[4]](#footnote-4)

Furthermore, Elliott Management is currently a significant investor and wields influence in at least three other utilities with MBR authority which compete with DTE Energy: CenterPoint Energy, Evergy Inc. and Duke Energy. Through the terms of a non-public agreement with CenterPoint obtained by Public Citizen, Elliott Management is entitled to material, non-public business information about CenterPoint Energy.[[5]](#footnote-5) Elliott Management has also negotiated a non-public agreement with Evergy, Inc. that likely contains similar access to material, non-public business information.[[6]](#footnote-6)

Access to material, nonpublic information for any publicly-traded company is highly coveted, and possession of this information bestows enormous leverage and power for any party able to access it. The Federal Trade Commission (FTC) warned FERC about an investor using privileged information as a means to control and influence companies. In comments submitted to FERC on April 29, 2009, the FTC cautioned: “Even a non-controlling partial acquisition by a private-equity firm of a competitor to a portfolio company that the private equity firm already owns in whole or in part can lead to anticompetitive effects if it . . . facilitates the exchange of competitively sensitive information . . . This concern can arise even in situations where the private equity firm does not own a controlling interest”.[[7]](#footnote-7)

In addition to CenterPoint and Evergy, the *Wall Street Journal* reports that “activist investor Elliott Management Corp. has a stake in Duke Energy Corp. and is pushing the utility giant to add directors to its board and possibly take other actions”.[[8]](#footnote-8)

Finally, Elliott Management owns 29 million shares of Peabody Energy, or 29.42% of its voting shares.[[9]](#footnote-9) According to March 2021 U.S. Energy Information Administration Form EIA-923 data, Peabody’s North Antelope Rochelle Mine supplies coal to two of DTE Energy’s generation units, Monroe and Trenton Channel, both in Michigan.[[10]](#footnote-10) The fact that Elliott Management is a “significant” investor in DTE at the same time that its affiliate Peabody sells fuel to DTE Energy’s power facilities raise additional anti-competitive concerns.

Respectfully submitted,

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1. Sheelah Kolhatkar, “Paul Singer, Doomsday Investor: The head of Elliott Management has developed a uniquely adversarial, and immensely profitable, way of doing business,” *The New Yorker*, August 20, 2018, www.newyorker.com/magazine/2018/08/27/paul-singer-doomsday-investor [↑](#footnote-ref-1)
2. www.prnewswire.com/news-releases/elliott-management-supportive-of-dte-energys-intent-to-spin-off-midstream-business-301160697.html [↑](#footnote-ref-2)
3. https://ir.dteenergy.com/news/press-release-details/2021/DTE-energy-reports-significant-progress-toward-completing-spin-off-of-its-midstream-business-DT-Midstream/default.aspx [↑](#footnote-ref-3)
4. Per 18 CFR § 35.36(a)(9)(iii). [↑](#footnote-ref-4)
5. See *Public Citizen v. CenterPoint*, FERC Docket No. EL21-2. [↑](#footnote-ref-5)
6. See October 19, 2020 Public Citizen *Protest*, FERC Docket Nos. ER20-67-001, ER20-116-001 and ER20-113-001. [↑](#footnote-ref-6)
7. FERC Docket No. PL09-3, at pages 6-7 and 13. [↑](#footnote-ref-7)
8. Cara Lombardo, “Duke Energy Faces Push by Activist to Expand Its Board,” May 11, 2021. [↑](#footnote-ref-8)
9. https://finance.yahoo.com/quote/BTU/holders?p=BTU [↑](#footnote-ref-9)
10. *Fuel Receipts and Costs*, www.eia.gov/electricity/data/eia923/ [↑](#footnote-ref-10)