

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Citizen, Inc.
and Citizens Action Coalition

v.

Docket No. EL20-

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

October 5, 2020

Section 206 Complaint of Public Citizen, Inc.

Public Citizen, Inc. and Citizens Action Coalition file this complaint pursuant to Section 206 of the Federal Power Act¹ seeking action by the Federal Energy Regulatory Commission against CenterPoint Energy, Inc. for failure to report a change in status of its market-based rate authority seller, Southern Indiana Gas and Electric Company.²

On May 6, 2020, CenterPoint Energy Inc.—the parent company of MBR seller Southern Indiana Gas and Electric Company—issued an 8-k notice to the U.S. Securities and Exchange Commission announcing an injection of \$1.35 billion of equity financing from a group of companies led by Elliott International, L.P., a Cayman Islands affiliate of the hedge fund Elliot Management Corp., in exchange for management changes demanded by the new investors.³ Although the companies providing the equity investment own less than 10% of CenterPoint Energy, Inc., the delivery of the cash was a *quid pro quo* for a management overhaul that results in the new investors exerting control over CenterPoint Energy, Inc., and therefore the leader of these investors, Elliot Management, should now be considered an affiliate of CenterPoint Energy, Inc. The May filing notes the existence of two non-public *Confidentiality Agreements* between Elliot Management and CenterPoint Energy that may convey certain rights and

¹ 18 CFR § 385.206.

² MBR Docket No. ER10-1338-.

³ <https://sec.report/Document/0001193125-20-135744/>

privileges to Elliot Management, furthering the argument that they be considered affiliates.

The investors, guided by Elliot Management Corp., brokered an equity infusion of \$1.35 billion for CenterPoint Energy, Inc.—a plan that Elliot Management had been working on “for several months”. Elliot Management Corp. received \$625 million worth of new, mandatory convertible preferred shares (called *Series C Mandatory Convertible Preferred Stock*), with Texas-based Bluescape Energy Partners receiving \$100 million. As part of Elliot Management’s cash injection, CenterPoint Energy Inc. entered into three common stock purchase agreements for a total of \$625 million funded by Boston-based Fidelity Management, Boston-based MFS Investment Management and Los Angeles-based Capital Group. Elliot Management Corp. is therefore responsible for over 46% of the new financing, and holds the vast majority of the new preferred Series C shares.

Simultaneous with Elliot Management Corp. brokering this \$1.35 billion equity infusion, CenterPoint Energy Inc. committed to a management overhaul, including installing two new board members preferred by Elliot Management Corp: David J. Lesar and Barry T. Smitherman. A month later, Mr. Lesar was elevated to CEO of CenterPoint Energy Inc. effective July 1, 2020.⁴ The factual record shows that Elliot Management Corp. flexed control of CenterPoint Energy Inc. in exchange for delivering \$1.35 billion in new equity.

Despite Elliot Management Corp. orchestrating a corporate upheaval of CenterPoint Energy, Inc., the company has failed to report the change in control as required by 18 C.F.R. § 35.42.

About the Consumer Advocates

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We are active before FERC promoting just and reasonable rates, and supporting efforts

⁴ www.sec.gov/ix?doc=/Archives/edgar/data/48732/000113031020000067/a8-k502ceoappointment.htm

for utilities to be accountable to the public interest. We have offices in Washington, DC and Austin, TX. Our financial details are located on our web site.⁵

Established in 1974, Citizens Action Coalition has advocated on behalf of Hoosiers on issues regarding energy policy, utility reform, health care, pollution prevention, and family farms. In order to achieve the objective to protect consumers in Indiana, CAC's activities include performing research, carrying out public education campaigns, organizing citizens, creating public awareness, lobbying legislators, intervening in utility cases before the Indiana Utility Regulatory Commission, and litigating when necessary.

**The New Investors—Particularly Elliot Management Corp.—Are
Affiliates of CenterPoint Energy Inc.**

When the facts the Commission relied upon in granting a seller market-based rate authorization change, the seller is required to report the change by filing a Notice of Change in Status consistent with Order No. 652 and 18 CFR § 35.42. Any change in status must be filed no later than 30 days after the change.

The Commission's typical standard to determine affiliation is when "any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company."⁶

However, the Commission has procedures to address affiliation for unique circumstances, such as Elliot Management Corp., when an entity has the ability to control without owning 10 percent:

Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.⁷

⁵ www.citizen.org/about/annual-report/

⁶ 18 CFR § 35.36(a)(9)(i).

⁷ 18 CFR § 35.36(a)(9)(iii).

CenterPoint Energy Inc. is a public utility holding company based in Houston, TX.⁸ Vectren has been a wholly-owned subsidiary of CenterPoint Energy, Inc. since February 1, 2019.⁹ Southern Indiana Gas and Electric Company (d/b/a Vectren Energy Delivery of Indiana, Inc.), is a wholly-owned subsidiary of CenterPoint Energy, Inc. and has been granted market-based rate authority. On May 22, 2019, the Commission approved a Notice of Change in Status of Southern Indiana Gas and Electric Company in the wake of CenterPoint's acquisition of Southern Indiana Gas and Electric Company.¹⁰

Following CenterPoint's acquisition of Vectren and its MBR affiliate Southern Indiana Gas and Electric Company, CenterPoint's stock struggled, falling from \$30.81 on February 1, 2019 to a low of \$12.10 on March 23, 2020. CEO Scott Prochazka left in February 2020, weeks after the company's request to increase rates was rejected by the Public Utility Commission of Texas.¹¹

Elliot Management, founded and led by Paul Elliott Singer, specializes in taking equity stakes of companies and using those investments to demand significant management changes, as its done a dozen or so times.¹² By May 6, 2020, Elliot Management Corp was able to secure a deal with CenterPoint Energy Inc. to arrange \$1.35 billion in new equity in exchange for management changes. At the time, Elliot Management's Jeff Rosenbaum told reporters of the explicit connection between the cash and the management overhaul: "We believe the transformative balance-sheet and governance enhancements announced today will have a positive impact on CenterPoint Energy's future," and that Elliot Management had "been working with the board over

⁸ CenterPoint Energy Houston Electric, LLC is a wholly-owned subsidiary of CenterPoint Energy Inc. and operates transmission lines subject to FERC jurisdiction. CenterPoint Energy Resources Corp. is a wholly-owned subsidiary of CenterPoint Energy Inc. and runs natural gas distribution facilities in six states.

⁹ *Notice of Consummation Transaction*, Docket No. EC18-104, February 6, 2019.

¹⁰ FERC Docket No. ER10-1338-003.

¹¹ Svea Herbst-Bayliss and David French, "Elliott, Fidelity pump \$1.4 billion into utility CenterPoint Energy," *Reuters*, May 7, 2020, www.reuters.com/article/us-centerpnt-energy-elliott/elliott-fidelity-pump-1-4-billion-into-utility-centerpoint-energy-idUSKBN22J305

¹² 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

the past several months” on the proposal.¹³ Indeed, the May 6 SEC filing mentions negotiated terms subject to a non-public “Confidentiality Agreement, dated March 17, 2020, between the Company [CenterPoint Energy], on the one hand, and Elliott Investment Management L.P. and Elliott Management Corporation, on the other hand.”¹⁴ The SEC filing references a second, non-public confidentiality agreement between CenterPoint and Elliot Management dated May 4.

Pursuant to the May 6, 2020 *Governance Arrangement Agreement Among CenterPoint Energy, Inc., Elliot International, L.P., and Elliot Associates, L.P.*, should either of Elliot Management’s pre-selected directors David J. Lesar or Barry T. Smitherman be “unable or unwilling to serve as a director,” than CenterPoint Energy must “cooperate with” Elliot Management “to mutually select an acceptable qualified candidate to be appointed to the Board as a substitute outside director”, as long as Elliot Management holds at least 2.5% of CenterPoint’s voting securities.¹⁵ This appears to convey control over CenterPoint by Elliot Management.

The *Governance Arrangement Agreement* imposes the requirement of CenterPoint Energy to establish a Business Review and Evaluation Committee, to which CenterPoint “shall provide to the Investor [Elliot Management] the reasonable opportunity to present and discuss its views” and CenterPoint cannot remove or replace members of this Committee without the “prior written agreement from” Elliot Management.¹⁶ Both Messrs. Lesar and Smitherman are on the Committee, with Lesar serving as Chair—which includes “overseeing the agenda, presiding over meetings and reporting to the Board.”¹⁷

The Elliot-led investors negotiated management changes to CenterPoint Energy *prior* to the issuing of the Series C shares. Securing control over a public utility as a

¹³ Nephele Kirong, “CenterPoint secures \$1.4B equity capital, forms review committee,” *S&P Global*, May 7, 2020, www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/update-centerpoint-secures-1-4b-equity-capital-forms-review-committee-58502958

¹⁴ <https://sec.report/Document/0001193125-20-135744/#d926772dex101.htm>

¹⁵ At page 4, <https://sec.report/Document/0001193125-20-135744/#d926772dex101.htm>

¹⁶ At page 6, <https://sec.report/Document/0001193125-20-135744/#d926772dex101.htm>

¹⁷ Exhibit A, Business Review and Evaluation Committee Charter, <https://sec.report/Document/0001193125-20-135744/>

precondition of investing equity capital circumvents the Commission’s change in status and affiliation rules.

This recalls an event when these same two hedge funds—Elliot Management and Bluescape Energy Partners—forced the public utility NRG to install two of the hedge funds’ designated board members, despite the fact that combined the hedge funds owned less than 9.4% of NRG.¹⁸ As with the case here, NRG never notified FERC of the change in control.

Conclusion

Statements to reporters and the contents of the May 6 *Governance Arrangement Agreement* suggest that there is a direct connection between Elliot Management’s shepherding of the \$1.35 billion in equity capital and the management changes at CenterPoint. 18 C.F.R. § 35.42 requires an entity with market-based rate authority to notify the Commission within 30 days of any change in status. Elliot Management’s equity stake—which conveyed changes in the management and control over CenterPoint—should have been noticed to the Commission. Furthermore, the Commission should classify Elliot Management as an affiliate of CenterPoint through its authority under 18 CFR § 35.36(a)(9)(iii).

Respectfully submitted

Tyson Slocum, Energy Program Director
Adrian Shelley, Texas Office Director
Public Citizen, Inc.
215 Pennsylvania Ave SE
Washington, DC 20003
(202) 588-1000
tslocum@citizen.org
ashelley@citizen.org

Kerwin Olson, Executive Director
Citizens Action Coalition
1915 W. 18th St., Suite C
Indianapolis, IN 46202
(317) 735-7727
kolson@citact.org

¹⁸ Ryan Maye Handy, “Hedge funds get spots on NRG board,” *Houston Chronicle*, Feb. 13, 2017.

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Docket No. EL 20-_____

CenterPoint Energy, Inc.

Notice of Complaint

October 5, 2020

Take notice that on October 5, 2020, pursuant to section 206 of the Federal Power Act (“FPA”), 16 U.S.C. 824e and 824d and Rule 206 of the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure, 18 CFR § 385.206, Public Citizen, Inc. and Citizens Action Coalition (Complainants) filed a formal complaint against CenterPoint Energy, Inc., (Respondent), alleging that Respondent has failed to report a change in status of its market-based rate authority seller, Southern Indiana Gas and Electric Company, Inc., as required by 18 CFR § 35.42.

Complainants asks that the Commission require Respondent to report the change in status under the market-based rate authority granted for Southern Indiana Gas and Electric Company, Inc., and also classify the hedge fund Elliot Management Corp. as an affiliate of Respondent.

The Complainants certify that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rule of Practice and Procedure (18 CFR §§ 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene and protests must be served on the Complainants.

Comment Date: 5 pm Eastern Time on _____, 2020.

Kimberly D. Bose, Secretary