UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Evergy Metro, Inc. Docket Nos. ER20-67-001

Evergy Missouri West, Inc. ER20-116-001

Evergy Kansas Central, Inc. ER20-113-001

**Answer of Public Citizen, Inc.**

Public Citizen asks 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 Evergy involves many complicated layers that take time to process and analyze.

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 Management continues to be aggressive in pushing for significant changes at Evergy, including advocacy that it be acquired by NextEra. 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 Evergy.

**Elliott Management Is Pushing For NextEra To Acquire Evergy**

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, noting that the hedge fund is “one of Evergy’s largest investors”.[[1]](#footnote-1) Elliott Management explicitly uses its ownership of Evergy to publicly and privately (through the terms of its non-public confidentiality agreement) advocate for significant management and personnel changes at the utility.

**An Elliott Management affiliate has fuel-supply contracts with Evergy**

Elliott Management owns nearly 29 million shares, or 30%, of Peabody Energy.[[2]](#footnote-2) Three of Evergy’s coal-fired power plants— the 1,300 MW Iatan facility in Missouri, the 1,400 MW La Cygne plant in Kansas and the 486 MW Lawrence Energy Center in Kansas—have fuel supply contracts with Peabody Energy.[[3]](#footnote-3) Nearly one-third of all of the coal produced at Peabody’s Caballo mine in Wyoming is sold to Evergy’s Iatan and La Cygne power plants. Determining affiliation is important for many reasons, including to ensure that Evergy’s fuel supply transactions are conducted at arm’s length from Elliott Management.

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

Elliott Management has quietly established itself as one of the most powerful activist investors in the U.S. utility industry, as the hedge fund leverages its capital to successfully push for management and investment changes at least three utilities.

Public Citizen chronicled in a complaint last month that Elliott Management had appeared to obtain control over the public utility CenterPoint Energy, in a manner very similar to its approach with Evergy, 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.[[4]](#footnote-4)

DTE Energy made a recent, surprise announcement to divest its midstream gas assets. Coinciding with the announcement, Elliott Management endorsed the move, disclosing for the first time 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]](#footnote-5)

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.

**Elliott Management has not appeared in this proceeding or addressed affiliation or control under FERC’s rules and regulations**

Evergy's October 29 Answer states that “counsel for Elliott Management swore under oath that ‘Elliott has no control or substantial influence over the policies and actions of Evergy.’ Elliott Management addressed the same Cooperation Agreement referenced by the [Public Citizen] Protest in this sworn [Kansas Corporation Commission] pleading, stating that ‘[t]he Agreement does not confer upon Elliott any rights of control over Evergy.’”[[6]](#footnote-6)

But these assertions were made in a Kansas regulatory proceeding, relating narrowly only to Kansas law and Kansas definitions of affiliation and control, which are not the same under the Federal Power Act or FERC rules and regulations. No executive or counsel for Elliott Management has made an appearance in this FERC docket, and no one from Elliott Management has ever addressed affiliation with Evergy as defined by FERC rules and regulations. And Evergy has not shared with FERC the non-public confidentiality agreement.

Respectfully submitted,

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1. https://news.yahoo.com/elliott-management-statement-regarding-evergy-133000982.html [↑](#footnote-ref-1)
2. https://finance.yahoo.com/quote/BTU/holders?p=BTU [↑](#footnote-ref-2)
3. www.eia.gov/electricity/data/eia923/ [↑](#footnote-ref-3)
4. FERC Docket No. EL21-2. [↑](#footnote-ref-4)
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 [↑](#footnote-ref-5)
6. At page 4. [↑](#footnote-ref-6)