

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Evergy Metro, Inc.
Evergy Missouri West, Inc.
Evergy Kansas Central, Inc.

Docket Nos. ER20-67-001
ER20-116-001
ER20-113-001

Protest of Public Citizen, Inc.

On September 28, the three Evergy, Inc. market-based rate sellers filed a Notice of Change in Status to advise the Commission that The Vanguard Group, Inc. and its affiliates reported being the beneficial owner of 12.42% of the publicly-traded securities of Evergy, Inc.

But the MBR sellers have failed to notify the Commission as required by 18 CFR § 35.42 that the hedge fund Elliott Management and its affiliates have obtained control over Evergy, Inc., in part through the terms of a non-public confidentiality agreement. In addition, Elliott Management must be classified as an affiliate of Evergy, Inc. and its three MBR sellers.¹

About Public Citizen, Inc.

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located on our web site.² Public Citizen intervened in this docket October 9.

Elliott Management Is An Affiliate of Evergy

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

¹ Public Citizen filed a Section 206 complaint against CenterPoint Energy, Inc. regarding similar efforts by Elliott Management to control that utility. See FERC Docket No. EL21-2.

² www.citizen.org/about/annual-report/

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.”³

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.*⁴

Evergy, Inc. was created by the 2018 merger of Westar Energy and Great Plains Energy. Evergy, Inc. has three affiliates with market-based rate authority: Evergy Metro, Inc., Evergy Missouri West, Inc., and Evergy Kansas Central, Inc.

Elliott Management Corp. is a hedge fund founded and led by Paul Elliott Singer specializing in taking equity stakes of companies in order to demand significant management changes, as it has done a dozen or so times.⁵

Beginning in October 2019, Elliott Management initiated non-public negotiations with Evergy's management and board of directors regarding management changes sought by the hedge fund.⁶ On January 21, 2020, Elliott Management published a letter addressed to the board, in which the hedge fund noted that it owned 11.3 million shares of Evergy—worth \$760 million— which it believed entitled it to make demands for significant management and investment changes at the company, writing in the letter that “We have made such a large investment in Evergy because we believe a clear

³ 18 CFR § 35.36(a)(9)(i).

⁴ 18 CFR § 35.36(a)(9)(iii).

⁵ 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

⁶ www.evergy.com/about-evergy/newsroom/2020/january/evergy-affirms-board-and-managements-focus

opportunity exists . . . We believe a full revamp of Evergy’s long-term capital plan and operating strategy is necessary . . .”⁷

One month later, “Evergy entered into an Agreement with Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P. [all wholly-owned affiliates of Elliott Management Corp.]” to install two of Elliott’s preferred new board members—Paul M. Keglevic and Kirkland B. Andrews—and form a new Strategic Review and Operations Committee of the Board.⁸ Both of Elliott’s board members were placed on this new board Committee, with Mr. Keglevic serving as co-chair. Evergy’s filing with the U.S. Securities and Exchange Commission notes that “Elliott has also agreed to vote its and its controlled affiliates’ shares of common stock of Evergy in favor” of various Evergy initiatives.

As part of this announcement, a *Cooperation Agreement* was filed with the SEC “among Elliott Investment Management L.P., a Delaware limited partnership, Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P., a Cayman Islands limited partnership, and Evergy, Inc.” which includes a non-public agreement between Elliott and Evergy: “Simultaneously with entering into this Agreement, Elliott Investment Management L.P. has entered into a confidentiality agreement with the Company pursuant to which it may elect to receive certain confidential information regarding review, actions, conclusions and recommendations by the Strategic Review & Operations Committee related to its exploration of a potential Merger Transaction, subject to the terms and conditions set forth therein.”⁹

The *Cooperation Agreement* between Evergy, Inc. and Elliott’s various affiliates bestows rights for Elliott Management to replace one of the two new board members in the event one or both of them depart during its duration: “the Company and the Elliott Parties shall cooperate with each other to select a mutually acceptable Qualified Candidate to be appointed to the Board as a substitute director.”¹⁰

⁷ www.prnewswire.com/news-releases/elliott-management-sends-letter-to-board-of-directors-of-evergy-inc-300990314.html

⁸ www.sec.gov/ix?doc=/Archives/edgar/data/54476/000171126920000010/a202003028-kadditional.htm

⁹ At page 3, www.sec.gov/Archives/edgar/data/54476/000171126920000010/exhibit101elliottcoope.htm

¹⁰ At page 4, www.sec.gov/Archives/edgar/data/54476/000171126920000010/exhibit101elliottcoope.htm

On August 5, Evergy announced the recommendations of the Strategic Review & Operations Committee that was initiated by Elliott Management, with the company announcing a new, \$8.9 billion capital investment initiative:

*The comprehensive review was announced in February following Evergy's entry into a cooperation agreement with Elliott Management Corporation. "We have appreciated our dialogue with Terry [Bassham, Evergy CEO], the rest of the management team and the Board over the past several months," said Jeff Rosenbaum, senior portfolio manager at Elliott Management Corporation. "The new Sustainability Transformation Plan is well positioned to deliver enhanced, best-in-class rate base and earnings growth, optimize capital allocation and significantly increase operational efficiencies in Evergy's transmission and distribution networks. We look forward to continuing our engagement with the management team and the Board during the implementation phase."*¹¹

Shortly after Evergy released the management plan, the company's CEO, Terry D. Bassham, announced his sudden retirement,¹² and a board committee that includes Elliott's Mr. Keglevic.¹³ It is typical for companies targeted by Elliott Management to replace the CEO during Elliott's involvement.

Conclusion

The hedge fund Elliott Management purchased millions of shares of Evergy, Inc. for the purpose of obtaining control over the company's management. Elliott Management and its affiliates succeeded in obtaining a formal *Cooperation Agreement* with Evergy, Inc. with the company agreeing to Elliott's terms to install its two preferred board members and the formation of a special committee to commit the company to a nearly \$9 billion capital spending plan. The Cooperation Agreement references a non-public confidentiality agreement between Evergy and Elliott Management that reserves numerous privileges for Elliott that appear to be unavailable to other investors, the public or the Commission. The Evergy MBR sellers failed to provide notice to the Commission of these changes as required by 18 CFR § 35.42. In addition, Elliott Management must be classified as an affiliate of Evergy, Inc.

¹¹ www.sec.gov/Archives/edgar/data/54476/000171126920000044/ex992evergylong-termpr.htm

¹² www.sec.gov/Archives/edgar/data/54476/000171126920000051/a202008278kevergyfiling.htm

¹³ www.sec.gov/Archives/edgar/data/54476/000171126920000051/exhibit991pressrelease.htm

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