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

**Comment of Public Citizen, Inc.**

On May 10, the Commission requested additional information from Evergy: “Please trace all ownership in the Evergy MBR Sellers until all upstream owners are identified, including The Vanguard Group, Inc. Also, please describe the business activities of all direct and upstream owners (including their affiliates).”[[1]](#footnote-1) The letter states that “For this purpose, there is a presumption of affiliation for entities in which Evergy MBR Sellers or any of their direct or upstream owners have at least a 10% interest,” but this clarification does not appear to preclude the requirement to list all “upstream owners”, particularly if an owner is not operating at arm’s length.

The May 28 response of the Evergy MBR sellers is deficient because it fails to list its upstream owners, Elliott Management and Bluescape Energy Partners, LLC. The two activist hedge funds are conspiring to exert clear control over Evergy, Inc., per 18 CFR § 35.36(a)(9)(iii), despite the fact that combined the hedge funds own only about 6% of Evergy’s shares.

In an agreement coordinated directly with Elliott Management, Bluescape secured ownership of Evergy in a non-arm’s length transaction with the utility on February 25, 2021 that resulted in Bluescape’s Executive Chairman, C. John Wilder, obtaining a voting seat on Evergy’s board of directors. As mentioned in our October 19 *Protest* in this docket, Elliott Management reached a previous deal in February 2020, in part through the terms of a non-public *Cooperation Agreement* that conveys access to Elliott Management of material, non-public information about Evergy’s business operations, and also provided two board seats of Elliott’s choosing.[[2]](#footnote-2)

The hedge funds wield significant influence over management, board and investment decisions at Evergy, Inc., in part through Elliott’s non-public agreement that provide access to material, non-public information about Evergy, Inc. Elliott Management has a similar agreement to obtain material, non-public business information of a competing MBR seller, CenterPoint Energy[[3]](#footnote-3). The combination of the hedge funds’ upstream ownership of Evergy, Bluescape’s Executive Chairman securing a voting seat on the board of directors in exchange for a non-arm’s length financial transaction, and Elliott’s rights to access material non-public information about multiple, competing MBR sellers raise significant concerns about the threat to competition and just and reasonable rates. The Commission must designate both Elliott Management and Bluescape Energy Partners, LLC as affiliates of Evergy, Inc.

On February 25, 2021, Evergy, Inc. entered into a *Material Definitive Agreement*[[4]](#footnote-4) with Bluescape Energy Partners, LLC that does the following:

1. Bluescape Energy Partners purchased 2,269,447 shares directly from Evergy on February 25 in a non-arm’s length transaction at a discount to the prevailing market price of Evergy’s stock price. Evergy only charged Bluescape $113,184,661.30, which amounts to $49.87/share— a discount of 7.11% from the Evergy closing stock price on February 25, 2021, and a 8.55% discount from the Evergy closing stock price on February 24, 2021. Bluescape didn’t purchase these shares on the open market via the Robinhood app; this was a private sale of Evergy’s securities to an adversarial hedge fund at a price that was a steep discount to prevailing market prices.
2. In exchange for Bluescape’s cash, Evergy agreed to install two of Bluescape’s preferred selections for the board of directors, including Bluescape’s Executive Chairman, C. John Wilder. In addition, Evergy agreed to appoint former Democratic U.S. Senator Mary L. Landrieu to the board. Evergy also agreed to allow Bluescape’s Wilder to chair the board’s Finance Committee. Allowing Bluescape’s Executive Chairman to have voting rights on Evergy’s board conveys control to Bluescape.
3. The agreement with Bluescape was done in conjunction with a new agreement signed with Elliott Management, which continues to own roughly 5% of Evergy (Bluescape only owns about 1% of the utility).

These non-arm’s length transactions raise serious concerns about the influence wielded by both Bluescape and Elliott Management:

*Evergy Inc. has undergone tremendous change in the year since reaching an agreement with activist investor Elliott Management Corp., including a new strategic direction, CEO and CFO. But Elliott isn’t going away. In fact, the hedge fund now is joined by a frequent investing partner . . . Bluescape Energy Partners LLC . . . In more practical terms, the agreements mean that Elliott—and now Bluescape—will be big forces in Evergy’s operations for the next two to three years. Beyond the new directors on the utility’s board, the investors have the right to initiate and hold private communications with the board and top Evergy executives.*[[5]](#footnote-5)

Access to material, nonpublic information 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”.[[6]](#footnote-6)

Evergy agreeing to sell an ownership stake to Bluescape in a non-arm’s length transaction in exchange for placing Bluescape’s Executive Chairman on its board of directors makes it abundantly clear that Bluescape must be treated as an affiliate of Evergy, per 18 CFR § 35.36(a)(9)(iii). This Bluescape transaction was done in conjunction with a renewed cooperation agreement with Elliott Management. In addition, Elliott Management’s agreement to obtain material, non-public business information from Evergy at the same time that it has a similar agreement in place with a competing utility with MBR authority, CenterPoint, is a threat to competition and just and reasonable rates.

Respectfully submitted,

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1. At page 2. [↑](#footnote-ref-1)
2. At page 3. [↑](#footnote-ref-2)
3. See *Public Citizen v. CenterPoint Energy*, FERC Docket No. EL21-2. [↑](#footnote-ref-3)
4. www.sec.gov/ix?doc=/Archives/edgar/data/0001711269/000171126921000021/evrg-20210226.htm [↑](#footnote-ref-4)
5. Brian Kaberline, Editor, *Kansas City Business Journal*, Feb 27, 2021, www.bizjournals.com/kansascity/news/2021/02/27/pressure-on-evergy-elliott-management-bluescape.html [↑](#footnote-ref-5)
6. FERC Docket No. PL09-3, at pages 6-7 and 13. [↑](#footnote-ref-6)