

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

GenOn California South, LP
Ormond Beach Power, LLC
Ellwood Power, LLC

Docket No. EC20-71

Protest of Public Citizen, Inc.

Public Citizen protests the privileged and confidential treatment of the identities of the holders of 10% or more of the voting securities of GenOn Holdings, Inc. These owners have been identified in public, and in previous filings with the Commission. Public Citizen also protests the failure to identify owners who hold less than 10% of voting securities.

About Public Citizen

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 supporting just and reasonable rates, and promoting utilities to be accountable to the public interest. Our financial details are located at our web site.¹

Public Citizen Protest

On June 5, GenOn Holdings, Inc. applied for permission under Section 203 of the Federal Power Act for a corporate reorganization and asset transfer among various affiliates. The upstream owners of GenOn Holdings, Inc. are non-public, and are marked privileged in Exhibit C-3 of the Application. FERC noticed the Application with a comment deadline of June 26.

Public Citizen intervened on June 11.

On June 21, Public Citizen emailed GenOn Holdings, Inc. counsel a signed non-disclosure certificate, and requested access to confidential Exhibit C-3. We heard nothing from counsel in response to our request. On June 25 at 1:29pm—one day before the comment deadline—Public Citizen sent a follow-up email to GenOn’s counsel

¹ www.citizen.org/about/annual-report/

reminding them of our request to access the privileged materials. Half an hour later, counsel apologized for the delay, and informed Public Citizen that counsel was “working on getting a copy of the Protective Agreement that is executed by GenOn so that we can send that back to you along with the confidential materials.” Twelve minutes later, GenOn’s counsel provided the contents of Exhibit C-3. When Public Citizen reminded counsel that providing the confidential exhibit so late provided us with inadequate time to file comments by the deadline, counsel agreed not to oppose a motion to extend the comment period to July 2. On June 26, Public Citizen filed the motion to extend the comment deadline. FERC has not yet acted on this motion.

Exhibit C-3 lists two entities that control more than 10% of the voting shares:

[REDACTED]. The Application justifies shielding these owners from the public because “The information contained in Confidential Exhibit C-3 is privileged and confidential, is not generally available to the public, and is exempt from the mandatory public disclosure requirements of the Freedom of Information Act.”²

But at least one owner has been identified in previous GenOn filings with the Commission. After declaring bankruptcy in June 2017, GenOn filed a Section 203 application at FERC on August 4, 2017 in which [REDACTED]

[REDACTED].³ [REDACTED]
[REDACTED].⁴ These public disclosures undermine the Application’s claim that the identities of the owners are “not generally available to the public.”

Furthermore, the Application fails to identify owners who control less than 10% of the voting securities. [REDACTED]

[REDACTED]

[REDACTED]

It is common for entities controlling far less than 10% to exert control over a public utility. Two hedge funds—which combined owned less than 9.4% of the public utility NRG—possessed enough control to force the company to install two of the hedge

² GenOn Application, at page 4.

³ Docket No. EC17-152, [REDACTED]

⁴ [REDACTED]

fund's designated board members.⁵ Many entities that control less than 10% often band together to vote their mutual interests. So it is conceivable that entities controlling a total of [REDACTED] of the voting securities could combine their votes and wield control.

The Application is also silent on whether any of the entities that collectively control [REDACTED] of the voting securities own other FERC-jurisdictional assets. Absent disclosure of the owners of [REDACTED] of GenOn's voting securities, the Commission lacks any information about these owners, and their potential affiliation with other FERC-jurisdictional assets.

Section 201 of the Federal Power Act states "that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest."⁶ It is in the public interest to disclose ownership of a public utility.

Respectfully submitted,

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⁵ Ryan Maye Handy, "Hedge funds get spots on NRG board," *Houston Chronicle*, Feb. 13, 2017.

⁶ 16 U.S.C. § 824(a).