

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NRG Power Marketing LLC	Docket Nos. ER10-2265-021
Midwest Generation LLC	ER10-2355-011
Vienna Power LLC	ER10-2947-016
Indian River Power LLC	ER10-3223-010
Direct Energy Services LLC	ER11-1846-012
Direct Energy Marketing Inc.	ER11-1847-012
Direct Energy Business LLC	ER11-1850-012
Energy Plus Holdings LLC	ER11-2062-029
SGE Energy Sourcing LLC	ER11-2175-007
Stream Energy Pennsylvania LLC	ER11-2176-006
Gateway Energy Services Corporation	ER11-2598-015
Stream Energy Maryland LLC	ER11-3188-007
Xoom Energy LLC	ER11-3418-009
Green Mountain Energy Company	ER11-4307-030
Reliant Energy Northeast LLC	ER11-4308-030
Stream Energy Columbia LLC	ER12-224-008
Stream Energy New Jersey LLC	ER12-225-008
Independence Energy Group LLC	ER12-261-029
Stream Energy New York LLC	ER12-2301-007
Hess Energy Marketing LLC	ER13-1192-009
NRG Chalk Point CT LLC	ER16-10-004
Stream Ohio Gas & Electric LLC	ER17-764-007
Stream Energy Illinois LLC	ER17-765-007
Stream Energy Delaware LLC	ER17-767-007
NRG Curtailment Solutions Inc.	ER21-2826-002
Astoria Gas Turbine Power LLC	ER10-2784-017
NRG Business Marketing LLC	ER23-2638-001
NRG Business Marketing LLC	ER23-2639-002
NRG Power Marketing LLC	ER23-2641-001
NRG Power Marketing LLC	ER23-2642-001

Protest of Public Citizen, Inc.

Nearly 90 years ago, Congress established “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest,”¹ requiring any public utility transferring control to first secure “an order of the Commission authorizing it to do so,” and only authorizing such acquisitions if the

¹ 16 USC § 824.

Commission “finds that the proposed transaction will be consistent with the public interest”.²

The Commission must determine that the activist investors Elliott Management and Bluescape Energy Partners are affiliated with NRG Energy per 18 CFR § 35.36(a)(9), as the funds coordinated on an investment strategy that resulted in economic control over NRG exceeding 10%.

Activist investors like Elliott Management flourish with a business model explicitly designed to circumvent regulatory compliance, deploying complex financial engineering to engage in hostile upheaval of reluctant public utilities without ever triggering the Commission’s oversight.

On April 4, 2023 Elliott Management registered the *repowernrg.com* domain as part of a campaign to force significant management and investment changes at NRG Energy.³

In a May 15, 2023 letter to NRG Energy’s board of directors posted to its *repoweringnrg.com* site, Elliott Management disclosed that it had “an investment of approximately \$1.0 billion representing a more than 13% economic interest in NRG Energy, Inc.” and, using that “economic interest” as an explicit negotiating tactic, issued a number of demands, including a request for NRG to consider five of its recommended names for the board of directors.⁴

That letter was followed by a second one on June 27, 2023, insisting on the termination of NRG’s CEO, among other ultimatums, stating that the “CEO has lost the confidence of the core investor base, and the Board lacks the will to make the right decision for the Company.”⁵

Elliott Management ultimately succeeded in forcing its requested changes upon NRG’s CEO and board of directors. On November 20, NRG Energy entered into a Cooperation Agreement with Elliott Management, resulting in the resignation of NRG’s

² 16 USC § 824b(a).

³ www.godaddy.com/whois/results.aspx?domain=repowernrg.com

⁴ www.prnewswire.com/news-releases/elliott-sends-letter-and-presentation-to-the-board-of-nrg-energy-301824565.html

⁵ www.prnewswire.com/news-releases/elliott-calls-for-new-ceo-and-strategic-review-at-nrg-energy-301864470.html

CEO and the appointment of four new members to NRG’s board of directors.⁶ This boardroom coup d’état demonstrates that Elliott’s use of cash-settled derivatives to obtain control of more than 13% of NRG’s economic interest constitutes affiliation and control under the Commission’s regulations.⁷ Elliott Management also concealed from the Commission its coordination with Bluescape Energy Partners in its efforts to control NRG.

Elliott Management was able to remove NRG’s CEO and secure the appointment of four new members of the board through its use of cash settled swaps that conveyed control of more than 10% of NRG’s economic interest. The U.S. Securities and Exchange Commission is so alarmed at the ability of activist investors to utilize such derivatives to control target companies that it proposed a rulemaking last year stipulating that using cash settled swaps in this manner replicates control over voting securities.⁸ The Commission must determine whether Elliott Management’s use of derivatives to acquire more than 10% of the economic interest of NRG Energy requires it to be deemed an affiliate of NRG Energy, per 18 CFR § 35.36(a)(9).

Elliott Conceals Its Coordination With Bluescape Energy Partners

Elliott Management has concealed from the Commission its coordination with Bluescape Energy Partners as part of its effort to influence and control NRG Energy.



**NRG
Energy**

Restructuring

Houston Texas

May 2023

Bluescape Energy Partners reported to the U.S. Securities and Exchange Commission that it owns 4,858,000 voting shares of NRG Energy, Inc.⁹ According to Bluescape Energy Partners’ “investment highlights” website, the purpose of the investment in NRG Energy is “restructuring”, with a start date of May 2023¹⁰—coinciding with Elliott Management’s May 15 letter to NRG’s board of directors announcing its campaign to influence and control the utility. Public Citizen has previously documented the history of extensive

⁶ www.sec.gov/ix?doc=/Archives/edgar/data/1013871/000110465923119741/tm2331129d1_8k.htm

⁷ 18 CFR § 35.36(a)(9).

⁸ www.sec.gov/files/rules/proposed/2022/33-11030.pdf

⁹ www.sec.gov/Archives/edgar/data/1629283/000117266123003847/xslForm13F_Xo2/infotable.xml

¹⁰ <https://bluescapedgroup.com/portfolio/>

collaboration between Elliott Management and Bluescape Energy Partners to influence and control public utilities.¹¹

Respectfully submitted,

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¹¹ See November 12, 2021 *Joint Protest of Public Citizen and The Communications Workers of America*, Docket Nos. ER20-116-001, ER20-67-001 and ER20-113-001, at pages 3-4, www.citizen.org/article/joint-protest-of-public-citizen-the-communications-workers-of-america-on-elliott-managements-control-of-energy/