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For meeting of April 14, 2016
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April 13, 2016

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas DAP by AN
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Subject: AO 2016-02 (Enable Midstream Services) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on April 14, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to http://www.fec.gov/law/draftaos.shtml.

Attachment

ADVISORY OPINION 2016-02

Meredith K. Lesher, Esq.
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Washington, DC 20001

DRAFT A

Dear Ms. Lesher:

We are responding to your advisory opinion request on behalf of Enable Midstream Services, LLC ("Enable") concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the "Act"), and Commission regulations to the possible affiliation of Enable's planned separate segregated fund ("SSF") with the SSFs of CenterPoint Energy, Inc. ("CenterPoint") or OGE Energy Corporation ("OGE Energy").

The Commission concludes Enable's planned SSF would not be affiliated with CenterPoint's SSF, but that it would be affiliated with OGE Energy's SSF.

Background

The facts presented in this advisory opinion are based on your letter received on January 5, 2016, and your emails received on February 10 and February 24, 2016, as well as publicly available information filed with the Securities and Exchange Commission.

Enable is a limited liability company that has elected to be treated as a corporation under the Internal Revenue Code for federal tax purposes. Advisory Opinion Request at AOR001. Enable is wholly owned by Enable Midstream Partners, LP (the "Limited Partnership"), a publicly traded master limited partnership. *Id*. As described further below, both Enable and the Limited Partnership are managed by Enable General Partners, LLC (the "General Partnership"). All three entities were formed as part of a joint venture (collectively, the "Joint Venture") between two publicly traded companies — CenterPoint and OGE Energy — and private investors. AOR001, AOR012, AOR027, AOR147.

CenterPoint is principally involved in electricity transmission and distribution and natural gas distribution. AOR002. OGE Energy's main business venture is Oklahoma Gas & Electric Company, an electric utility. *Id*. CenterPoint and OGE Energy formed the Joint Venture in 2013 "to own, operate and develop midstream natural gas and crude oil infrastructure assets."[1] AOR001.

The Limited Partnership was created through three transactions: 1) CenterPoint converted its wholly-owned subsidiary CenterPoint Energy Field Services, LLC into a Delaware limited partnership and changed its name to the Limited Partnership; 2) CenterPoint provided certain equity interests in its subsidiaries that conducted the remaining portion of its midstream business to the Limited Partnership in exchange for a limited partnership interest in the Limited Partnership; and 3) OGE Energy and a private equity firm named ArcLight Capital Partners, LLC provided 100% of their equity interests in another energy company (Enogex, LLC) to the Limited Partnership, also in exchange for limited partnership interests in the Limited Partnership. AOR002. The Limited Partnership then granted a non-economic management interest to the General Partnership.[2] *Id*.; *see also* AOR037 (describing the General Partnership's interest).

The Limited Partnership's formation involved the consolidation of approximately 1,900 employees from CenterPoint, OGE Energy, and their various subsidiaries. AOR002. Enable now employs approximately 1,700 of those employees, who conduct the day-to-day operations of the Limited Partnership and its subsidiaries, including Enable. *Id*.

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[1] Midstream activities involve the gathering, processing, transportation, and storage of natural gas and crude oil. AOR002.

[2] CenterPoint's interest in the Limited Partnership is currently held through another subsidiary it wholly owns: CenterPoint Energy Resources Corporation. OGE Energy's interest in the Limited Partnership is currently held through its wholly owned subsidiary, OGE Enogex Holdings, LLC. Because the subsidiaries are merely pass-throughs and do not affect the analysis herein, this advisory opinion refers to the CenterPoint entities collectively as "CenterPoint" and to the OGE entities collectively as "OGE Energy."

As of September 30, 2015, the ownership of the Limited Partnership was as follows: 55.4% CenterPoint, 26.3% OGE Energy, and 18.3% held by the general public. AOR002, AOR008. The limited partners' ownership interest, however, does not give them the authority to "participate in the operation, management or control . . . of [the Limited Partnership's] business."[3] AOR056; *see also* AOR095 ("no Limited Partner in its capacity as such shall have any management power over the business and affairs" of the Limited Partnership). Rather, the General Partnership, through its board of directors ("Board") and executive officers, "conduct[s], direct[s], and manage[s] all activities" of the Joint Venture. AOR002-04, AOR095, AOR173.

The General Partnership has two "members" — CenterPoint and OGE Energy. AOR003. Each member owns a 50% management interest, as well as 40% and 60% economic interest, respectively, in the General Partnership.[4] AOR002, AOR008; *see also* AOR154 (defining "member" of General Partnership to mean economic unit holder (a/k/a "economic member"), management unit holder (a/k/a "management member"), or both). Management interest represents the right to vote on company matters, while the economic interest represents the right to share income, losses, and distributions of company assets. AOR161.

The General Partnership's Board is "exclusively vested" with "all management powers over the business and affairs" of the Joint Venture, and "no Member [of the General Partnership] shall have any management power over [its] business and affairs." AOR173. The Board consists of eight directors: two directors designated to represent CenterPoint; two directors

[3] The limited partners do have certain enumerated rights relating to documentation, such as the right to obtain the Limited Partnership's most recent filings with the Securities and Exchange Commission, list of names and addresses of each partner, and copies of the Limited Partnership's organizational documents. *See* AOR056.

[4] Economic interest means interest in "income, gain, loss and deduction of the [General Partnership] and a right to receive distributions of the [General Partnership's] assets." AOR161. The General Partnership, however, holds only a "non-economic general partner interest" in the Limited Partnership. AOR008. Thus, any economic interest that CenterPoint and OGE Energy receive from the General Partnership would not be derived from Enable.

designated to represent OGE Energy; three independent directors required "as condition for listing [the Limited Partnership] on the [New York Stock Exchange]";[5] and the General Partnership's Chief Executive Officer. AOR002, AOR173, AOR175. The Board can only act upon an affirmative majority vote of its directors. AOR176-78.

Approximately 175 employees of OGE Energy have been seconded to the Limited Partnership and are managed by the General Partnership's officers.[6] *Id*. These employees constitute approximately 10% of Enable's workforce. AOR002. One of these seconded employees is an executive officer of OGE Energy. AOR204. The seconded employees participate in OGE Energy's defined benefit and retiree medical plans, and their salaries are initially paid by OGE Energy, which is then reimbursed by Enable. *Id*. "These employees will remain seconded to [the Limited Partnership], subject to certain termination rights of [the Limited Partnership] and OGE Energy." *Id*. Although Enable "directs the day-to-day activities of seconded employees," Enable "must coordinate with OGE Energy on employment issues." *Id*. The payroll and benefits provided by OGE Energy to the seconded employees "may not be terminated" before the "seconding agreement" is terminated. *Id*.

The Limited Partnership also maintains services agreements with CenterPoint and OGE Energy. AOR203. Pursuant to these agreements, CenterPoint and OGE Energy perform certain administrative services for the Limited Partnership that are generally consistent with the level and type of services they provided to each of their respective businesses prior to the formation of the Limited Partnership. *Id*. These services include accounting, finance, legal, risk management,

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[5] Independent directors are "designated by unanimous vote of the Management Members," AOR174, and they may be removed "by unanimous vote of the Management members." AOR175.

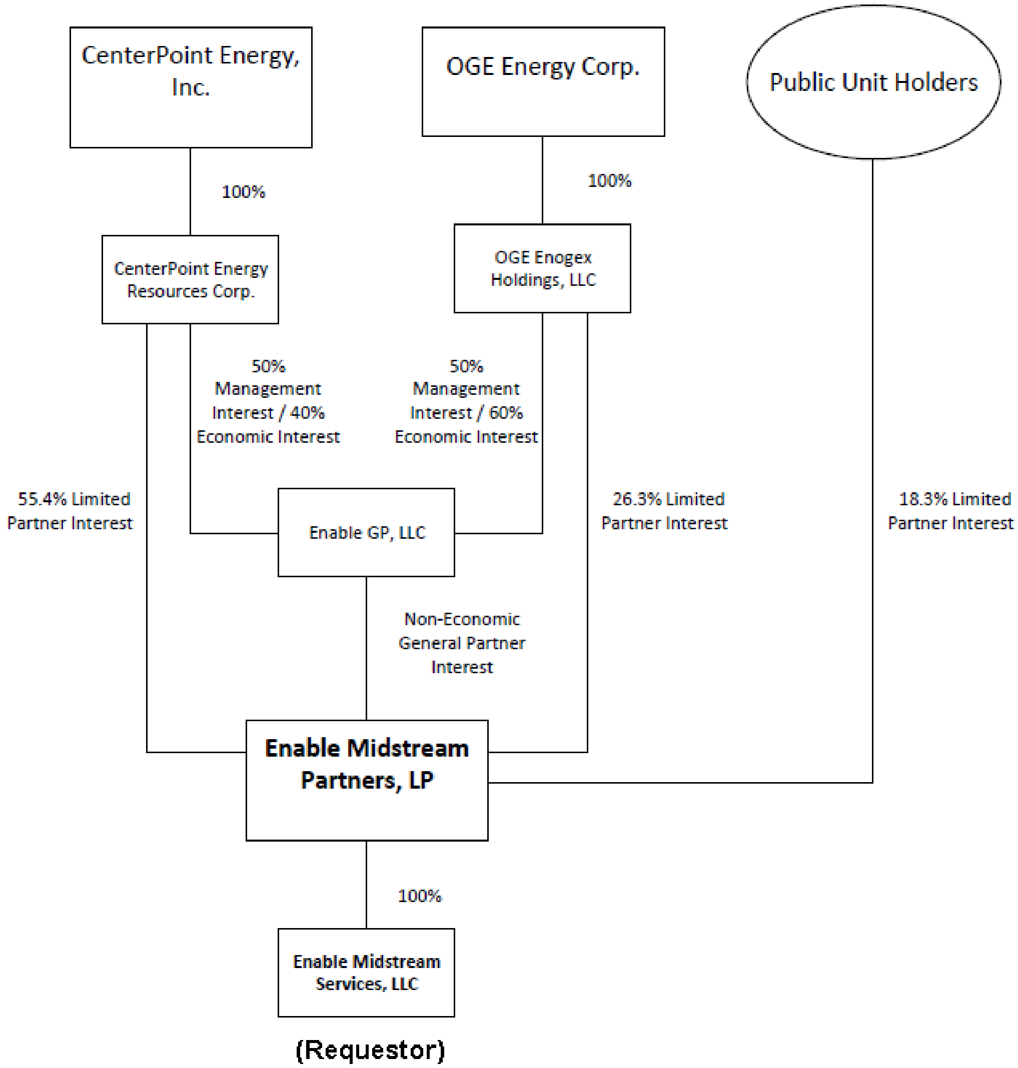
[6] The request states that this is a temporary arrangement that will be phased out over time, although there is no fixed wind-down schedule. AOR002.

information technology, and human resources. *Id*. The Limited Partnership reimburses CenterPoint Energy and OGE Energy for their direct expenses or, where the direct expenses cannot reasonably be determined, an allocated cost as set forth in the service agreements.[7] *Id*. The Limited Partnership itself has no directors or officers,[8] and it employs fewer than 50 people directly. AOR002.

The following diagram illustrates the business connections of the Enable Joint Venture:

[7] For the year ending December 31, 2015, the Limited Partnership reimbursed $11 million and $15 million to CenterPoint and OGE Energy, respectively, pursuant to the services agreements. AOR203. The initial term of the services agreements ends in May 2016, after which date they continue on a year-to-year basis unless terminated by the Limited Partnership upon ninety days' notice. *Id*.

[8] SEC, *Form 10K*, *Enable Midstream Partners*, *LP* 133 (2015), https://www.sec.gov/Archives/edgar/data/1591763/000159176316000128/a2015enbl10-k htm.



CenterPoint maintains an SSF called CenterPoint Energy, Inc. Political Action Committee ("CenterPoint PAC"). OGE Energy maintains an SSF called OGE Energy Corp. Employee's Political Action Committee ("OGE Energy PAC"). Enable plans to establish its own SSF that will be "operated and maintained completely separate" from CenterPoint PAC and OGE Energy PAC. AOR003. The officers of the Joint Venture will oversee Enable's SSF matters. *Id.*

Question Presented

Will Enable's planned SSF be affiliated with CenterPoint PAC or OGE Energy PAC?

Legal Analysis and Conclusions

Enable's SSF would not be affiliated with CenterPoint PAC but would be affiliated with OGE Energy PAC.

Political committees, including SSFs, are "affiliated" if they are established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof. *See* 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). For purposes of the Act's contribution limits, contributions made to or by affiliated political committees are considered to have been made to or by a single political committee. 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

Commission regulations identify certain entities that are *per se* affiliated, and hence whose SSFs are *per se* affiliated, including those established, financed, maintained, or controlled by a single corporation and its subsidiaries. *See* 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i). Under the Act, a parent-subsidiary relationship, and thus *per se* affiliation, is created when a parent company owns a majority interest in another organization. *See* Advisory Opinion 2003-28 (Horizon Lines) (finding *per se* affiliation where corporation owned controlling interest in LLC); Advisory Opinion 1985-27 (R.J. Reynolds Industries) (finding *per se* affiliation where parent corporation owned controlling interest in another corporation); *see also* Advisory Opinion 2003-21 (Lehman Brothers Holdings) (finding that minority ownership interest in corporation does not create parent-subsidiary relationship). Enable is not *per se* affiliated with CenterPoint or OGE Energy because neither owns a majority interest in Enable.

In the absence of *per se* affiliation, the Commission examines "the relationship between organizations that sponsor committees, between the committees themselves, [and] between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated." *See* 11 C.F.R. § 100.5(g)(4)(i). Commission regulations provide a non-exhaustive list of ten "circumstantial factors" to be considered "in the context of the overall relationship" in order to determine whether the respective SSFs are appropriately considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii); Advisory Opinion 2014-21 (Cambia Health Solutions) at 4; Advisory Opinion 2014-11 (Health Care Service Corporation Employees' PAC) ("HCSC") at 4; Advisory Opinion 1999-39 (WellPoint Health Networks PAC) at 2; *see also* Advisory Opinion 2009-18 (Penske Truck Leasing); Advisory Opinion 2007-12 (Tyco International Management Company Employee PAC). The Commission considers the relevant factors in turn.

(A) Controlling Interest

This factor asks whether a sponsoring organization owns a controlling interest in the voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A).

In cases of joint venture partnerships or LLCs wholly owned and equally controlled by two corporations, the Commission usually finds the partnership or LLC to be affiliated with both corporate owners under the relevant affiliation factors. *See, e.g.*, Advisory Opinion 2014-17 (Berkadia Commercial Mortgage) at 5 (finding that LLC owned and controlled equally by two corporations was affiliated with both of them). But evidence of joint *ownership* of an entity alone is not determinative: The critical factor in these situations — and one that is missing here — is that the corporate owners in fact jointly *control* the venture. For example, in Advisory Opinion 2014-17 (Berkadia), the corporate owners appointed "an equal number of individuals to [the joint venture's] Board that oversees its operations, and at least one appointee of each corporation [had to] approve all of the Board's actions." *Id*.; *see also* Advisory Opinion 1997-13 (United Space Alliance PAC) at 3 (finding affiliation where two corporate owners of LLC selected equal number of individuals to advisory board, both owners had to approve LLC's "significant policy determinations," and officials from both companies selected LLC's officers); Advisory Opinion 1992-17 (Du Pont Merck Program for Active Citizenship) at 3 (finding affiliation where two corporate owners of LLC each controlled 50% of board of directors and assent of each was needed for LLC's major decisions); Advisory Opinion 1994-09 (Armco Steel) (finding affiliation where two corporate owners of LLC shared equal control of LLC's board).

Because Enable is managed and controlled by the General Partnership (through the Board), this factor turns on whether CenterPoint and OGE Energy have the ability to control the General Partnership. As the General Partnership's co-equal management members, CenterPoint and OGE Energy are each entitled to appoint two directors to its eight-member Board. AOR174. Board actions require "the affirmative vote of at least a majority of Directors," AOR176, and so neither CenterPoint nor OGE Energy controls the Board.[9] Further, Board

[9] Although the three independent directors are appointed by unanimous vote of CenterPoint and OGE Energy as management members, AOR174, the independent directors do not represent either company on the Board. The appointment of independent directors is required so that the Limited Partnership's shares can be listed on the NYSE. AOR002, AOR175. To qualify as an independent director, an individual must meet "the independence, qualification and experience requirements of the [NYSE]." AOR153. And according to the NYSE listing requirements, "[n]o director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company." N.Y. Stock Exch., N.Y. Stock Exch. Listed Co. Manual Art. 303A.02 (2016), http://nysemanual nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F3%5F3&manual=%2Flcm%2Fsections%2Flcm%2Dsections%2F. It is unclear whether CenterPoint and OGE Energy appoint the eighth director (the CEO of Enable), but even if they did, the analysis would not change because shared control over an additional seat on the Board would not gain either entity control over the Board.

actions do not require the assent or approval of the CenterPoint or OGE Energy appointed directors: On any given matter, the directors appointed by one of the companies could align with the three independent directors to overrule the directors appointed by the other company. And none of the directors has the authority to make any management decisions on his or her own. Thus, given the Board's composition and majority voting requirement, no evidence exists that CenterPoint and OGE Energy equally control the Board, or that either company controls Enable individually. The absence of control over the Board — and therefore over Enable — weighs against finding that the entities' SSFs would be affiliated.

(B) Governance

This factor concerns whether a sponsoring organization has the authority or ability to direct or participate in the governance of the other sponsoring organization through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures. 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

As described above, the Board is the governing body that manages the day-to-day activities of Enable, and both CenterPoint and OGE Energy are entitled to appoint two directors to the eight-member Board. CenterPoint and OGE Energy therefore "participate in the governance" of Enable through their representatives on the Board. AOR174. But because neither CenterPoint nor OGE Energy controls the Board individually, and they do not control the Board collectively, they lack the authority to "direct" the Enable Joint Venture. *See* Advisory Opinion 1984-36 (American Health Capital) at 3 (finding that corporation appointing four members to nine-member governing board of partnership "lacks authority to direct partnership"); *cf*. Advisory Opinion 1997-13 (United Space Alliance PAC) at 3 (finding corporate owners directed or participated in governance of joint venture where officials of owners selected officers of joint venture and those officers were "vested with responsibility for managing and supervising day-to-day operations" of joint venture). Thus, the representation that CenterPoint and OGE Energy each have in the governance of Enable's managing entity weighs in favor of finding affiliation under this factor, but given that this representation amounts to only one-quarter control for each company, the factor does not weigh heavily.

(C) Hiring Authority

This factor concerns whether a sponsoring organization has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C).

With one exception, the Board has the exclusive authority to hire and fire the officers who manage the Enable Joint Venture. AOR180-81. Given that, as described above, CenterPoint and OGE Energy each appoint only one quarter of the Board's directors, neither company has the authority to take these actions on its own. The one exception, however, is that an officer of OGE Energy is seconded to Enable, and Enable is required to "coordinate with OGE Energy on employment issues" regarding seconded employees. In other words, OGE Energy retains some contractual control over decisions regarding that officer's employment status. This "authority or ability" indicates affiliation between Enable and OGE Energy under this factor, albeit weakly, given that the control applies to only one of Enable's officers.

CenterPoint cannot control Enable's hiring of officers, so this factor weighs against affiliation for CenterPoint. *See* Advisory Opinion 2014-11 (HCSC) at 5 (finding that lack of hiring authority weighs against finding affiliation); *cf.* Advisory Opinion 1997-13 (United Space Alliance PAC) at 4 (finding affiliation where "assent" of both companies owning joint venture was necessary for certain major hiring decisions).

(D) Common Membership

This factor considers whether a sponsoring organization has common or overlapping membership with the other sponsoring organization that indicates a formal or ongoing relationship between the sponsoring organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D).

Neither CenterPoint nor OGE Energy is a labor organization, membership organization, cooperative, or trade association. Accordingly, this factor does not apply. *See* Advisory Opinion 2014-18 (Rayonier Advanced Materials) ("Rayonier") at 7.

(E) Common Officers or Employees

This factor asks whether sponsoring organizations have common or overlapping officers or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E).

Although Enable's formation involved the consolidation of employees from CenterPoint, OGE Energy and its various subsidiaries, CenterPoint currently has no common employees or officers with Enable. AOR002. Accordingly, this factor weighs against affiliation for CenterPoint. *See* Advisory Opinion 2014-18 (Rayonier) at 7 (determining that affiliation is not indicated where there are no common or overlapping officers or employees); Advisory Opinion 2014-11 (HCSC) at 6 (same).

OGE Energy, on the other hand, currently shares approximately 175 of its employees, including one officer, with Enable. This constitutes approximately one-tenth of Enable's workforce. Although these 175 individuals work for Enable, OGE Energy continues to pay their salaries and benefits; only later does Enable reimburse OGE Energy for these costs. Further, Enable directs the day-to-day activities of these employees, but it cannot make unilateral decisions regarding their employment. Instead, Enable must coordinate with OGE Energy on employment issues. Indeed, until the "seconding agreement" between Enable and OGE Energy ends, OGE Energy is obligated to continue paying the salaries and benefits of the seconded employees working for Enable. Although this employment sharing arrangement between Enable and OGE Energy eventually may be phased out, there is no established timeframe when, or even if, this phase-out will happen.[10]

The extensive entanglement of OGE Energy with Enable in the employment of one-tenth of Enable's employees demonstrates that an "ongoing relationship" exists between the two organizations. This factor weighs heavily in favor of affiliation between OGE PAC and Enable's planned SSF. *See* Advisory Opinion 2006-12 (International Association of Machinists and Aerospace Workers) (finding affiliation where entities had "overlapping employees," including employees who were "shared").

(F) Former Officers or Employees

This factor concerns whether a sponsoring organization has any members, officers, or employees who previously were members, officers, or employees of the other sponsoring organization, indicating a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

The vast majority of Enable's employees are former employees of either CenterPoint or OGE Energy. Although retaining former employees may in some circumstances indicate an ongoing relationship, *see, e.g.*, Advisory Opinion 2004-23 (U.S. Oncology Good Government Committee) at 7, the Commission has placed less emphasis on this factor when analyzing

[10] Enable has elected to forego the solicitation of eligible members from this group of seconded employees. AOR205. While that is a decision that Enable is entitled to make, it has no bearing on the question of whether Enable and OGE Energy are affiliated.

affiliation of entities that have undergone significant business restructuring. For example, in Advisory Opinion 2014-18 (Rayonier), the Commission found that a company created following a spin-off was not affiliated with its former parent company where 90% of the spun-off company's employees were former employees of the parent company. *Id*. at 7. The Commission reasoned that this did not indicate a formal or ongoing relationship because such employment was a "necessary consequence of a parent company spinning off a business unit." *Id*. Here, similarly, the high percentage of former employees appears to be no more than the necessary consequence of having consolidated disparate subsidiaries into a new business entity. Under these circumstances, this factor does not weigh in favor of affiliation.

(G)-(H) Providing Funds or Goods and Arranging for the Provision of Funds or Goods

Factor (G) considers whether a sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to the other sponsoring organization or committee. 11 C.F.R. §§ 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G). Factor (H) concerns whether a sponsoring organization causes or arranges for funds or goods to be provided to the other sponsoring organization in a significant amount or on an ongoing basis. 11 C.F.R. §§ 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H)

Neither CenterPoint nor OGE Energy provides nor arranges the provision of funds or goods in a significant amount or on an ongoing basis to Enable, or vice versa. As described above, however, both companies provide administrative services to Enable for "accounting, finance, legal, risk management, information technology, and human resources" — services that are generally consistent with the level and type of services they provided to each of their respective businesses prior to Enable's formation. AOR204. These services are provided pursuant to negotiated "service agreements" between the companies, and Enable is required to reimburse CenterPoint Energy and OGE Energy for their direct expenses in providing these services. *Id*. The Commission has previously concluded that providing "limited administrative services" to a company is not indicative of affiliation so long as the service provider receives compensation as part of an arms-length transaction. *See* Advisory Opinion 1999-39 (WellPoint Health Networks PAC) at 4 (finding disaffiliation between two entities even though one provided administrative services to other). Accordingly, because CenterPoint and OGE Energy provide services and receive compensation as part of an arms-length transaction, this factor does not weigh in favor of affiliation.

(I) Formation

This factor involves whether a sponsoring organization had an active or significant role in the formation of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I).

As described above, both CenterPoint and OGE Energy played significant roles in the formation of Enable by contributing their interests in certain midstream services companies in exchange for partnership interests in the Limited Partnership. However, when the formation results from a completed business restructuring, as is the case here, the Commission has found that this factor does not "require a finding that the entities are affiliated." *See, e.g.*, Advisory Opinion 2012-21 (Primerica) at 11 (concluding that corporation's involvement in formation of spun off company resulting in "nearly complete separation of corporate leadership and personnel" did not require finding affiliation); Advisory Opinion 2007-12 (Tyco International Management Company Employee PAC) at 7 (same). Similarly, with the exception of the OGE Energy employees seconded to Enable, the consolidation of CenterPoint and OGE Energy subsidiaries into Enable resulted in nearly complete separation of corporate leadership and personnel. In light of the separation of business operations and the almost complete separation of leadership and personnel, CenterPoint's and OGE Energy's role in the formation of Enable does not require a finding that the entities are affiliated.

(J) Contribution Patterns

This factor pertains to whether the sponsoring organizations' SSFs have similar patterns of contributions or contributors that would indicate a formal or ongoing relationship between the sponsoring organizations or committees. 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J). Because Enable has not yet established its SSF, no comparison in contribution patterns can be made. Thus, this factor does not apply. *See* Advisory Opinion 2012-21 (Primerica) at 11.

Context of the Overall Relationship Between the Entities

In considering the foregoing circumstantial factors, the Commission examines the "context of the overall relationship" between the entities to determine whether they are properly considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii).

For OGE Energy, three factors weigh in favor of finding affiliation between OGE PAC and Enable's planned SSF. First, the fact that OGE Energy has 175 common employees — including one common officer — with Enable weighs heavily in favor of finding affiliation. Second, that OGE Energy, through its representatives on the Board, also participates in Enable's governance further weighs in favor of finding affiliation, although this factor does not weigh heavily given OGE Energy's relatively small share of the Board. Third, OGE Energy's contractual rights over the employment status of one of Enable's officers indicates additional, ongoing control. One factor weighs against affiliation of these entities: OGE Energy does not own a controlling interest over the Board. Other affiliation factors are either neutral or not applicable. On balance, therefore, the Commission concludes that analysis of the affiliation factors as a whole indicates that Enable is both “financed” and “maintained” by OGE Energy on an ongoing basis, primarily through Enable’s continuing, open-ended employment of OGE Energy’s employees. Accordingly, the Commission concludes that OGE PAC would be affiliated with Enable’s planned SSF.

For CenterPoint, in contrast, the only factor weighing in favor of affiliation is the fact that CenterPoint participates, through its representatives on the Board, in the governance of Enable. But as with OGE Energy, given that CenterPoint only controls a quarter of the Board, this factor does not weigh heavily. That CenterPoint does not own a controlling interest on the Board, has no hiring authority over Enable’s employees, and does not have common employees with Enable weighs against finding affiliation. Other affiliation factors are either neutral or inapplicable. Thus, on balance, the affiliation factors weigh against finding affiliation. The Commission accordingly concludes that CenterPoint PAC would not be affiliated with Enable’s planned SSF.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

Matthew S. Petersen
Chairman