



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

March 22, 2022

Robert J. Joseph  
Jones Day

Re: OGE Energy Corp. (the "Company")  
Incoming letter dated January 11, 2022

Dear Mr. Joseph:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take the steps necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for an 80% vote be replaced by a requirement for a 67% vote for such proposals.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(9). We note that the Proposal and the Company's proposal seek a similar objective of reducing the supermajority voting requirements in the Company's governing documents. Therefore, the proposals do not present shareholders with conflicting decisions such that a reasonable shareholder could not logically vote in favor of both proposals.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the Company's proposal does not substantially implement the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

# JONES DAY

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January 11, 2022

No-Action Request  
1934 Act/Rule 14a-8

Via E-Mail ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Ladies and Gentlemen:

On behalf of our client OGE Energy Corp., an Oklahoma corporation (the “Company”), we are submitting this letter pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Act”), in reference to the Company’s intention to omit the shareholder proposal (the “Shareholder Proposal”) filed by shareholder John Chevedden (the “Proponent”) from its 2022 proxy statement and form of proxy relating to its Annual Meeting of Shareholders tentatively scheduled for May 19, 2022. The definitive copies of the 2022 proxy statement and form of proxy are currently scheduled to be filed pursuant to Rule 14a-6 on or about April 4, 2022. We hereby request that the staff of the Division of Corporation Finance (the “Staff”) not recommend any enforcement action to the Securities and Exchange Commission (the “Commission”) if, in reliance on the analysis set forth below, the Company excludes the Shareholder Proposal from its proxy materials. Pursuant to Staff Legal Bulletin 14D, we are submitting this request for no-action relief under Rule 14a-8 by use of the Commission e-mail address, [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j)(2)), and the undersigned has included his name, email address and telephone number in this letter. We are simultaneously forwarding by email a copy of this letter to the Proponent as notice of the Company’s intent to omit the Shareholder Proposal from the Company’s 2022 proxy materials.

## Background

*The Shareholder Proposal.* On November 5, 2021, the Proponent submitted a shareholder proposal to the Company regarding shareholder action by written consent. On

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December 5, 2021, the Proponent submitted a different shareholder proposal to the Company. This subsequent proposal was identified as “Revised” and is the proposal that is referred to herein as the “Shareholder Proposal.” The Shareholder Proposal requests that the Company’s Board of Directors (the “Board”) take the steps necessary to change each voting requirement that calls for an 80% vote to be replaced by a requirement for a 67% vote. The Shareholder Proposal includes the following language:

“Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for an 80% vote be replaced by a requirement for a 67% vote for such proposals.

A copy of the Shareholder Proposal, including the supporting statement, is attached to this letter as Exhibit A.

*History.* Mr. Chevedden has submitted to the Company similar proposals regarding supermajority voting four previous times (for the 2012, 2015, 2019 and 2021 annual meetings). In each of those cases, the proposal called for the elimination of the 80% supermajority voting provisions in the company’s charter documents to be replaced by a simple majority voting requirement. The proposals received more than majority support at the 2012, 2015 and 2019 annual meetings and, in response, in 2013, 2016 and 2020 the Board adopted resolutions approving and recommending to shareholders amendments to its certificate of incorporation (the “Certificate”) to eliminate the 80% supermajority voting standard. Approval of these amendments to the certificate of incorporation required approval of at least 80 percent of the Company’s outstanding common stock. Despite the Board’s support, the 2013, 2016 and 2020 proposals to amend the Company’s certificate of incorporation failed to pass, receiving less than the required 80 percent of the shareholders of record voting in favor. As mentioned above, a similar shareholder proposal was received with respect to the 2021 annual meeting and it, too, received majority support. Accordingly, at an upcoming meeting, the Board is expected to approve, and recommend to the Company’s shareholders for approval at the 2022 Annual Meeting of Shareholders, a proposal (the “Company Proposal”) to amend the Company’s Certificate to eliminate voting provisions that require greater than a majority vote (collectively, the “Supermajority Provisions”).

*The Company Proposal.* The Company’s Certificate currently includes the following Supermajority Provisions:

- Article VI (the “fair price provisions”) requires the affirmative vote of 80% of the Company’s outstanding shares to approve certain business combinations with

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interested shareholders, subject to certain exceptions, including an exception for transactions approved by the Board;

- Paragraph E of Article VII requires an affirmative vote of at least 80% of the Company's outstanding shares to amend Article VII of the Certificate, which includes provisions relating to the terms of directors, removal of directors and newly created directorships;
- Article VIII requires an affirmative vote of at least 80% of the Company's outstanding shares to amend Article VIII (relating to the prohibition of the shareholders to act by written consent); and
- Article IX requires an affirmative vote of at least 80% of the Company's outstanding shares to amend (i) certain provisions of the Company's bylaws, including those provisions relating to calling special meetings, no written consent by shareholders, advance notice of shareholder action, number, tenure and resignation of directors and notification of director nominations or (ii) Article IX of the Certificate.

The Company Proposal that is expected to be approved by the Board at its upcoming meeting would:

- delete Article VI (fair price provisions) in its entirety;
- delete Paragraph E of Article VII (requires an affirmative vote of at least 80% of the Company's outstanding shares to amend Article VII of the Certificate);
- delete the 80% requirement in Article VIII (requires an affirmative vote of at least 80% of the Company's outstanding shares to amend Article VIII of the Certificate);
- delete the 80% requirement in Article IX relating to the amendment of Article IX; and
- replace the 80% requirement in Article IX relating to specified bylaw amendments with a majority of the votes present and entitled to vote standard.

If the Company Proposal is adopted and Article VI is deleted, under Oklahoma law, subject to certain exceptions, including an exception for transactions approved by the Board, the required vote to approve a business combination with interested shareholders would be 66-2/3%

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of the Company's outstanding shares. If the Company Proposal is adopted and Paragraph E of Article VII, the 80% requirement in Article VIII and the 80% requirement in Article IX relating to the amendment of Article IX are deleted, under Oklahoma law, amendment of Article VII, Article VIII or Article IX of the Certificate would require a vote of a majority of the Company's outstanding shares. If the Company Proposal is adopted, the 80% requirement in Article IX relating to specified bylaw amendments would be replaced with a majority of the votes present and entitled to vote standard, which is consistent with the general voting standard under Oklahoma law.

The only other provisions in either the Certificate or bylaws that require a voting standard greater than a simple majority of the votes cast are: (i) Paragraph D of Article VII of the Certificate and Section 5.2 of the bylaws that require a majority of the combined voting power of the outstanding shares (i.e., majority of outstanding shares) to remove a director from office; and (ii) Section 4.6 of the bylaws that provides that the general voting standard for actions by the shareholders, unless voting by a greater number of shareholders is required by law or the Certificate, is a majority of the shares represented at a meeting and entitled to vote on a matter at which a quorum is present. Collectively, these three provisions are referred to as the "Non-Supermajority Provisions." These Non-Supermajority Provisions would not be eliminated or amended by the Company Proposal. The voting standard in Paragraph D of Article VII of the Certificate and Section 5.2 of the bylaws is the same as the vote required by Section 1027H of the Oklahoma General Corporation Act for a shareholder vote to remove a director. This will be consistent with the Shareholder Proposal, which requests changes only to the extent in compliance with applicable laws. The majority of the shares represented and entitled to vote standard in Section 4.6 of the bylaws is the default voting standard under Section 1061 of the Oklahoma General Corporation Act and differs from the simple majority of the votes cast standard stated in the Shareholder Proposal only in the way that abstentions are treated. Under Oklahoma law, abstentions are not deemed to be votes cast, and therefore under a simple majority of the votes cast standard, an abstention would have no effect on the vote. Under the majority of the shares represented and entitled to vote standard in Section 4.6 of the bylaws, an abstention would be deemed present and entitled to vote and therefore would be included in the denominator. Accordingly, an abstention would have the effect of a vote against.

#### **Discussion of Reasons for Omission**

We hereby respectfully request that the Staff concur in our view that the Shareholder Proposal may be excluded from the 2022 proxy materials pursuant to Rule 14a-8(i)(10) and/or Rule 14a-8(i)(9). As mentioned above, the Board will consider approving, and recommending to the Company's shareholders for approval at the 2022 Annual Meeting of Shareholders, the Company Proposal that would eliminate the Supermajority Provisions in the Certificate.



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We are submitting this no-action request at this time to address the timing requirements of Rule 14a-8. Although the Board has not yet approved the Company Proposal, the Staff has permitted companies to exclude proposals in reliance on Rule 14a-8(i)(10) where the company represents that its board is expected to approve amendments to its charter (subject to approval of the company's shareholders at the next annual meeting) that would substantially implement the shareholder proposal, and then supplements its request for no-action relief by notifying the Staff after the board has approved such amendments. *See e.g., AbbVie Inc.* (Feb. 27, 2019); *OGE Energy Corp.* (March 2, 2016); *NETGEAR, Inc.* (March 31, 2015); *Applied Materials, Inc.* (December 19, 2008); *Sun Microsystems, Inc.* (August 28, 2008); *H. J. Heinz Company* (May 20, 2008); and *NiSource, Inc.* (March 10, 2008). Similarly, the Staff has permitted companies to exclude proposals in reliance on Rule 14a-8(i)(9) where the company represents that its board is expected to consider a company proposal that will conflict with a shareholder proposal, and then supplements its request for no-action relief by notifying the Staff after that action has been taken. *See, e.g., SUPERVALU INC.* (April 20, 2012); *Duke Energy Corp.* (March 2, 2012); *The Home Depot, Inc.* (March 29, 2011); *Cognizant Technology Solutions Corporation* (March 25, 2011) (concurring with exclusion of a shareholder proposal requesting simple majority vote where the company notified the Staff that its board was expected to consider a conflicting company proposal and later filed a supplemental letter notifying the Staff that the conflicting company proposal had been approved by the board). Accordingly, we will notify the Staff supplementally after the Board has considered the Company Proposal and taken the actions described above.

**I. Rule 14a-8(i)(10) – The Shareholder Proposal May be Omitted Because it Has Been Substantially Implemented.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. Interpreting the predecessor to Rule 14a-8(i)(10), the Commission stated that the rule was “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management.” *Exchange Act Release No. 12598* (July 7, 1976). To be excluded, the proposal does not need to be implemented in full or exactly as presented by the proponent. Instead the standard for exclusion is substantial implementation. *See Exchange Act Release No. 40018* (May 21, 1998, *n. 30 and accompanying text*); *see also Exchange Act Release No. 20091* (August 16, 1983).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company's particular policies, practices and procedures “compare favorably with the guidelines of the proposal,” and not where those policies, practices and procedures are embodied. *Texaco, Inc.* (March 28, 1991). *See also, e.g., NetApp, Inc.* (June 10, 2015); *Medtronic, Inc.* (June 13, 2013). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has satisfied the essential objective of the

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proposal, even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement the proposal in every detail or (iii) exercised discretion in determining how to implement the proposal. *See, e.g., AbbVie Inc.* (Feb. 27, 2019); *OGE Energy Corp.* (March 2, 2016); *Exxon Mobil Corporation* (March 17, 2015; *recon. denied* March 25, 2015); *Exelon Corp.* (February 26, 2010); *Anheuser-Busch Companies, Inc.* (January 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (February 17, 2006); *Talbots Inc.* (April 5, 2002); *Masco Corp.* (April 19, 1999 and March 29, 1999). In each of these cases, the Staff concurred with the company's determination that the proposal was substantially implemented in accordance with Rule 14a-8(i)(10) when the company had taken actions that included modifications from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objective of the proposal. In fact, one of those cases (*OGE Energy Corp.* (March 2, 2016)), involved the same parties as in the present circumstance and a similar fact pattern. In that case, the Staff concurred with the Company's request to omit a proposal from Mr. Chevedden because the Company had approved resolutions adopting and recommending changes to the Certificate that would eliminate the 80% supermajority voting requirement and implement the essential objectives of Mr. Chevedden's majority vote proposal *OGE Energy Corp.* (March 2, 2016).

Under this standard, the Company, following the expected approval of the Company Proposal by the Board, will have substantially implemented the Shareholder Proposal because the amendments in the Company Proposal would more than fulfill the essential objective of the Shareholder Proposal, which is to eliminate the 80% supermajority voting provisions in the charter and bylaws and make it easier for shareholders to adopt certain amendments to the Certificate. Although the Shareholder Proposal only requests that the 80% vote requirement be replaced by a 67% vote requirement, the Company Proposal goes even further and would replace the 80% vote requirement with a majority vote requirement, thus making it even easier for shareholders to approve certain amendments to the Certificate. The presence in the Company Proposal of a lower vote standard than the 67% vote standard requested in the Shareholder Proposal does not affect this analysis of whether the Shareholder Proposal will have been substantially implemented because by lowering the vote standard to a majority vote standard the Company Proposal will have effectively implemented the lowering of the voting threshold to at least 67%.

The Board lacks unilateral authority to adopt the amendments to the Certificate that constitute the Company Proposal, but by submitting the Company Proposal to the Company's shareholders at the 2022 Annual Meeting, the Company is addressing the essential objective of the Shareholder Proposal. Accordingly, there is no reason to ask shareholders to vote on a resolution to urge the Board to take action that the Board is already expected to take.

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The Staff has, on numerous occasions, including with respect to shareholder proposals that are similar to the Shareholder Proposal, concurred that a shareholder proposal can be omitted from the proxy statement as substantially implemented under Rule 14a-8(i)(10) when companies have taken actions substantially similar to the Company's actions. *See, e.g., AbbVie Inc.* (Feb. 27, 2019); *OGE Energy Corp.* (March 2, 2016); *PPG Industries, Inc.* (January 21, 2015); *McKesson Corporation* (April 8, 2011); *Express Scripts, Inc.* (January 28, 2010); *MDU Resources Group, Inc.* (January 16, 2010); *Time Warner Inc.* (February 29, 2008). In this regard, the Staff has consistently granted no-action relief under Rule 14a-8(i)(10) when companies have sought to exclude shareholder proposals requesting elimination of supermajority voting requirements after the board of directors of those companies have taken action to approve (or were expected to approve) the necessary amendments to their respective charters and/or bylaws, and represented that such amendments would be submitted to a vote of shareholders (as applicable) in the next annual meeting. *See, e.g., AbbVie Inc.* (Feb. 27, 2019); *OGE Energy Corp.* (March 2, 2016); *Applied Materials, Inc.* (December 19, 2008); *Sun Microsystems, Inc.* (August 28, 2008); *H.J. Heinz Company* (May 20, 2008); *NiSource, Inc.* (March 10, 2008). In each of these cases, the Staff granted no-action relief to a company that intended to omit a shareholder proposal that was similar to the Shareholder Proposal, based on actions by the company's board of directors (and, as applicable, anticipated actions by the company's shareholders) to remove supermajority voting provisions.

As noted above, the Board is expected to approve, at an upcoming Board meeting, the amendments to the Certificate to eliminate the Supermajority Provisions and will direct that the Company Proposal be submitted to a shareholder vote at the 2022 Annual Meeting of Shareholders. The Company believes that these actions would achieve the "essential objective" of, and therefore substantially implement, the Shareholder Proposal, so that the Company may properly omit the Shareholder Proposal from the Company's 2022 proxy materials in accordance with Rule 14a-8(i)(10). Accordingly, we respectfully request that the Staff concur that the Shareholder Proposal may be properly omitted from the Company's 2022 proxy materials on the basis of Rule 14a-8(i)(10).

## **II. Rule 14a-8(i)(9) – The Shareholder Proposal May be Omitted Because it Conflicts with the Company's Proposals.**

If the Staff does not concur that the Shareholder Proposal may be excluded pursuant to Rule 14a-8(i)(10) because it has been substantially implemented, then the Shareholder Proposal should be excluded pursuant to Rule 14a-8(i)(9), which provides that a company may exclude a shareholder proposal from its proxy materials "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." According to Staff Legal Bulletin No. 14H, published October 22, 2015, whether a proposal is excludable under this basis should focus on whether there is a direct conflict between the management and



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shareholder proposals. A direct conflict would exist if a reasonable shareholder could not logically vote in favor of both proposals, *i.e.*, a vote for one proposal is tantamount to a vote against the other proposal. A direct conflict would not exist if a reasonable shareholder, although possibly preferring one proposal over the other, could logically vote for both.

Prior to the issuance of Staff Legal Bulletin No. 14H, the Staff has stated consistently that where a shareholder proposal and a company proposal present alternative and conflicting decisions for shareholders, the shareholder proposal may be excluded under Rule 14a-8(i)(9). The Staff has granted no-action relief under Rule 14a-8(i)(9) where the shareholder-sponsored proposal contained a threshold that differed from a company-sponsored proposal, because submitting both proposals to a shareholder vote would present alternative and conflicting decisions for shareholders.

The Staff previously has permitted exclusion of shareholder proposals under circumstances somewhat similar to the instant case. For example, in each of *Cognizant Technology Solutions Corporation* (Mar. 25, 2011), *Flowserve Corporation* (Jan. 25, 2011) and *Best Buy Co. Inc.* (Apr. 17, 2009), the Staff allowed the company to omit a shareholder proposal for simple majority voting when the company's proposal was to reduce supermajority provisions from 80% to 66-2/3%. *See, SUPERVALU INC.* (April 20, 2012) (excluding a proposal for simple majority voting when the company planned to submit a proposal to amend its certificate of incorporation and bylaws to reduce supermajority provisions from 75% to 66-2/3%); *Duke Energy Corp.* (March 2, 2012) (excluding a proposal for simple majority voting when the company planned to submit a proposal to amend its certificate of incorporation and bylaws to reduce supermajority provisions from 80% to 75%); *(Walt Disney Co.* (Nov. 16, 2009; *recon. denied* Dec. 17, 2009) and *H.J. Heinz Co.* (Apr. 23, 2007) (concurring in excluding a proposal requesting that the company adopt simple majority voting when the company indicated that it planned to submit a proposal to amend its bylaws and articles of incorporation to reduce supermajority provisions from 80% to 60%).

The current situation is the opposite of the precedent cited above. Instead of a company proposal to reduce the 80% vote requirement to 66-2/3% while the shareholder proposal asked to reduce the 80% vote requirement to a majority vote proposal, in this circumstance, the Company Proposal would ask the Company's shareholders to approve amendments to the Company's Certificate that would eliminate the 80% of the outstanding shares voting standard in each of the Supermajority Provisions to essentially a majority voting standard while the Shareholder Proposal asked to reduce the 80% vote requirement to a 67% vote requirement. Because of this potential conflict between the Company Proposal and the Shareholder Proposal, inclusion of both proposals in the 2022 proxy materials would present a situation where a reasonable shareholder could not logically vote in favor of both proposals, *i.e.*, a vote for the Company Proposal is tantamount to a vote against the Shareholder Proposal. Because implementation of

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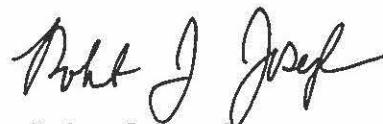
the Company Proposal would have the effect of lowering the 80% supermajority voting requirements to a majority voting standard, a vote for the Shareholder Proposal would have the effect of recommending a higher vote requirement than the Company Proposal. Therefore, a shareholder who is voting for the Company Proposal cannot logically also vote for the Shareholder Proposal.

For the above-mentioned reasons, the Company respectfully requests the Staff to concur in the Company's view that the Shareholder Proposal may be excluded from the 2022 proxy materials under Rule 14a-8(i)(9).

**Conclusion**

For the reasons given above, we respectfully request that the Staff not recommend any enforcement action from the Commission if the Company omits the Shareholder Proposal from its 2022 proxy materials. If the Staff disagrees with the Company's conclusion to omit the Shareholder Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. Notification and a copy of this letter are simultaneously being forwarded to the Proponent.

Sincerely,



Robert J. Joseph

cc: Patricia D. Horn  
John Chevedden

[OGE: Rule 14a-8 Proposal, November 5, 2021, Revised December 5, 2021]

[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

RESOLVED, Shareholders request that our board take the necessary steps so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for an 80% vote be replaced by a requirement for a 67% vote for such proposals.

One of the main purposes of this proposal is to give shareholders a choice of a transition from 80% voting requirements to 67% voting requirements since management is expected to have a 2022 proposal calling for a transition from an 80% vote requirement to a 50.1% vote requirement. The OGE management proposal is expect to fail again (4 failures since 2013) and thus it is important to have a proposal that has a better chance of approval than the management proposal.

Shareholder proposals similar to this proposal received from 84% to 97% support at OGE from 2015 to 2021.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements like 80% have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School.

Supermajority requirements are used to block proposals supported by most shareholders but opposed by a status quo management.

Please vote yes:

**Simple Majority Vote – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

OGE Energy Corp.

PO Box 321  
Oklahoma City, Oklahoma 73101-0321  
405-553-3000  
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Patricia D. Horn  
Vice President  
Governance and Corporate Secretary  
hornpd@oge.com  
405-553-3622

November 19, 2021

Via Email [REDACTED] PII

Mr. John Chevedden

[REDACTED] PII

Re: OGE Energy Corp. (the "Company")

Dear Mr. Chevedden:

On November 5, 2021, the Company received a letter forwarding a shareholder proposal regarding written consent (the "Proposal") for inclusion in the Company's proxy statement relating to its 2022 annual meeting.

The proxy rules of the Securities and Exchange Commission ("SEC") relating to shareholder proposals include a number of eligibility and procedural requirements. Your submission does not comply with these requirements. In particular, your submission does not comply with the eligibility and procedural requirements of Rule 14a-8(b)(1)(iii) because you did not provide a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of your shareholder proposal and the specific business days and times you are available to discuss the proposal with the company.

Under SEC Rule 14a-8(f), your response containing the necessary information must be post-marked, or transmitted electronically, no later than 14 days from the date you received this letter. Failure to adequately respond within the required timeframe may result in the exclusion of your proposal.

For your convenience, a copy of the SEC's shareholder proposal rules is enclosed.

The Company reserves the right to assert at a later date that your proposal and any supporting statement may be properly omitted from the Company's proxy statement on additional grounds as contemplated by the SEC's proxy rules.

Please acknowledge receipt of this email by return email and direct any correspondence regarding this matter to the undersigned.

Sincerely,

Patricia D. Horn  
Corporate Secretary





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**§ 240.14a-8 Shareholder proposals.**

This section addresses when a company must include a shareholder's proposal in its proxy statement

and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- (a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*
  - (1) To be eligible to submit a proposal, you must satisfy the following requirements:
    - (i) You must have continuously held:
      - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
      - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
      - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
      - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
    - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
    - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
      - (A) Agree to the same dates and times of availability, or
      - (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
    - (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
      - (A) Identifies the company to which the proposal is directed;
      - (B) Identifies the annual or special meeting for which the proposal is submitted;
      - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;



- (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
  - (E) Identifies the specific topic of the proposal to be submitted;
  - (F) Includes your statement supporting the proposal; and
  - (G) Is signed and dated by you.
- (v) The requirements of [paragraph \(b\)\(1\)\(iv\)](#) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
  - (vi) For purposes of [paragraph \(b\)\(1\)\(i\)](#) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
- (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with [paragraph \(b\)\(1\)\(i\)\(A\)](#) through [\(C\)](#) of this section, through the date of the meeting of shareholders.
  - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with [paragraph \(b\)\(1\)\(i\)\(A\)](#) through [\(C\)](#) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
    - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D ([§ 240.13d-101](#)), Schedule 13G ([§ 240.13d-102](#)), Form 3 ([§ 249.103 of this chapter](#)), Form 4 ([§ 249.104 of this chapter](#)), and/or Form 5 ([§ 249.105 of this chapter](#)), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under [paragraph \(b\)\(1\)\(i\)\(A\)](#) through [\(C\)](#) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
      - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
      - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
      - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with [paragraph \(b\)\(1\)\(i\)\(A\)](#) through [\(C\)](#) of this section, through the date of the company's annual or special meeting.
- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the



proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in [paragraph \(b\)\(2\)](#) of this section to demonstrate that:

- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
  - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
  - (iii) This [paragraph \(b\)\(3\)](#) will expire on January 1, 2023.
- (c) *Question 3: How many proposals may I submit?* Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
- (d) *Question 4: How long can my proposal be?* The proposal, including any accompanying supporting statement, may not exceed 500 words.
- (e) *Question 5: What is the deadline for submitting a proposal?*
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q ([§ 249.308a of this chapter](#)), or in shareholder reports of investment companies under [§ 270.30d-1](#) of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
  - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
  - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?*
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under [§ 240.14a-8](#) and provide you with a copy under Question 10 below, [§ 240.14a-8\(j\)](#).



- (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.*
- (h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?*
  - (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
  - (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
  - (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- (i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?*
  - (1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1):

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

- (2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2):

We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

- (3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- (5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- (6) *Absence of power/authority:* If the company would lack the power or authority to implement



the proposal;

- (7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;
- (8) *Director elections*: If the proposal:
  - (i) Would disqualify a nominee who is standing for election;
  - (ii) Would remove a director from office before his or her term expired;
  - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
  - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
  - (v) Otherwise could affect the outcome of the upcoming election of directors.
- (9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

- (10) *Substantially implemented*: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

- (11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
  - (12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:
    - (i) Less than 5 percent of the votes cast if previously voted on once;
    - (ii) Less than 15 percent of the votes cast if previously voted on twice; or
    - (iii) Less than 25 percent of the votes cast if previously voted on three or more times.
  - (13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.
- (j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy



statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11: May I submit my own statement to the Commission responding to the company's arguments?*

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?*

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?*

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

- (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
- (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

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**EFFECTIVE DATE NOTE**

**Effective Date Note:** At [85 FR 70294](#), Nov. 4, 2020, [§ 240.14a-8](#) was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

---

JOHN CHEVEDDEN

Ms. Patricia D. Horn  
Corporate Secretary  
OGE Energy Corp. (OGE)  
321 N. Harvey  
Oklahoma City OK 73101-0321  
PH: 405-553-3000  
FX: 405-553-3760

Dear Ms. Horn,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

**I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.**

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

  
John Chevedden

  
Date

cc: Brian Alford <alfordbt@oge.com>  
Sharlette Deviney <devinesr@oge.com>

[OGE: Rule 14a-8 Proposal, November 5, 2021]

[This line and any line above it – *Not* for publication.]

**Proposal 4 – Real Shareholder Right to Act by Written Consent**

Shareholders request that our board of directors take the necessary steps to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes that one shareholder shall be able to perform the ministerial function of asking for a record date.

This proposal topic won impressive 79%-support at the 2020 OGE Energy annual meeting without any special effort by the shareholder proponent.

In response to our 79% vote OGE management submitted a totally useless version of written consent to a vote of OGE shareholders. The OGE management proposal called for a majority of the shares outstanding to be required to take the baby step of asking for a record date for written consent. Management thus proposed a perfect Catch-22 situation for shareholders.

In order to get a record date 50% of shares outstanding would be needed to make a request. This 50% of shares means 73% of the shares that vote at the annual meeting would have to formally ask for a record date. In doing so these shareholders would have to give their contact information to management – and what a bonanza for management this would be.

Management could then go to the corporate war chest and hire proxy solicitors to pester these shareholders to withdraw their requests for a record date and even offer to reward them if they changed their mind.

Management would only need to convince one in 3 shareholders to change their mind and the acting by written consent effort would be a lost cause.

Please vote yes:

**Real Shareholder Right to Act by Written Consent – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]



Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

PII

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the negative management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.



January 23, 2022

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 1 Rule 14a-8 Proposal**  
**OGE Energy Corp. (OGE)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 11, 2022 no-action request.

There is no implementation because of the overwhelming likelihood that the management proposal will fail. The 2020 management proposal on this topic only received 66% support from all shares outstanding when it needed 80% support.

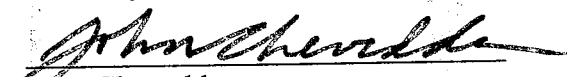
Plus even if the management proposal is approved it will not implement the 67% thresholds called for in the shareholder proposal.

There is no conflict because shareholders can vote for both proposals because both proposals call for reducing the supermajority voting thresholds – although specifying different parentage thresholds. This is similar to the following example in Staff Legal Bulletin No. 14H.

Staff Legal Bulletin No. 14H states:

“For example, if a company does not allow shareholder nominees to be included in the company’s proxy statement, a shareholder proposal that would permit a shareholder or group of shareholders holding at least 3% of the company’s outstanding stock for at least 3 years to nominate up to 20% of the directors would not be excludable if a management proposal would allow shareholders holding at least 5% of the company’s stock for at least 5 years to nominate for inclusion in the company’s proxy statement 10% of the directors. This is because both proposals generally seek a similar objective, to give shareholders the ability to include their nominees for director alongside management’s nominees in the proxy statement, and the proposals do not present shareholders with conflicting decisions such that a reasonable shareholder could not logically vote in favor of both proposals.”

Sincerely,

  
John Chevedden

cc: Patricia D. Horn

[OGE: Rule 14a-8 Proposal, November 5, 2021, Revised December 5, 2021]

[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

RESOLVED, Shareholders request that our board take the necessary steps so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for an 80% vote be replaced by a requirement for a 67% vote for such proposals.

One of the main purposes of this proposal is to give shareholders a choice of a transition from 80% voting requirements to 67% voting requirements since management is expected to have a 2022 proposal calling for a transition from an 80% vote requirement to a 50.1% vote requirement. The OGE management proposal is expected to fail again (4 failures since 2013) and thus it is important to have a proposal that has a better chance of approval than the management proposal.

Shareholder proposals similar to this proposal received from 84% to 97% support at OGE from 2015 to 2021.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements like 80% have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School.

Supermajority requirements are used to block proposals supported by most shareholders but opposed by a status quo management.

Please vote yes:

**Simple Majority Vote – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

January 31, 2022

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 2 Rule 14a-8 Proposal**  
**OGE Energy Corp. (OGE)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 11, 2022 no-action request.

There is no implementation because of the overwhelming likelihood that the management proposal will fail. The 2020 management proposal on this topic only received 66% support from all shares outstanding when it needed 80% support.

Plus even if the management proposal is approved it will not implement the 67% thresholds called for in the shareholder proposal.

There is no conflict because shareholders can vote for both proposals because both proposals call for reducing the supermajority voting thresholds – although specifying different parentage thresholds. This is similar to the following example in Staff Legal Bulletin No. 14H.

Staff Legal Bulletin No. 14H states:

“For example, if a company does not allow shareholder nominees to be included in the company’s proxy statement, a shareholder proposal that would permit a shareholder or group of shareholders holding at least 3% of the company’s outstanding stock for at least 3 years to nominate up to 20% of the directors would not be excludable if a management proposal would allow shareholders holding at least 5% of the company’s stock for at least 5 years to nominate for inclusion in the company’s proxy statement 10% of the directors. This is because both proposals generally seek a similar objective, to give shareholders the ability to include their nominees for director alongside management’s nominees in the proxy statement, and the proposals do not present shareholders with conflicting decisions such that a reasonable shareholder could not logically vote in favor of both proposals.”

**In 2018 the Staff reaffirmed that Staff Legal Bulletin No. 14H at least applies to a company when it involves the addition of a policy as is the case here. *Whole Foods Market, Inc.* (January 16, 2015) provides background for the Staff position.**

Sincerely,

  
John Chevedden

cc: Patricia D. Horn





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
CORPORATION FINANCE

January 16, 2015

James McRitchie

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Re: Whole Foods Market, Inc.  
Incoming letter dated December 23, 2014

Dear Mr. McRitchie:

This is in response to your letters dated December 23, 2014 and December 30, 2014 concerning the shareholder proposal you submitted to Whole Foods Market. We also have received a letter from Whole Foods Market dated December 29, 2014. On December 1, 2014, we issued a letter expressing our informal view that Whole Foods Market could exclude your proposal from the proxy materials for its upcoming annual meeting based on Exchange Act rule 14a-8(i)(9). You have asked us to reconsider our position or, in the alternative, present the matter for Commission review.

The Division has reconsidered its position. On January 16, 2015, Chair White directed the Division to review the rule 14a-8(i)(9) basis for exclusion. The Division subsequently announced, on January 16, 2015, that in light of this direction, the Division would not express any views under rule 14a-8(i)(9) for the current proxy season. Accordingly, we express no view concerning whether Whole Foods may exclude the proposal under rule 14a-8(i)(9).

Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

David R. Fredrickson  
Chief Counsel

cc: A.J. Ericksen  
Baker Botts L.L.P.

██████████@██████████

February 6, 2022

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 3 Rule 14a-8 Proposal**  
**OGE Energy Corp. (OGE)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 11, 2022 no-action request.

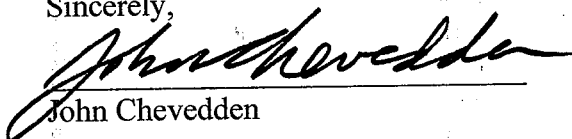
Management could have given notice that it intends to approve "at an upcoming meeting" a proposal that calls for a 66-2/3% vote to replace the current 80% vote requirements. 66-2/3% vote requirements would be in line with the rule 14a-8 proposal here. In fact there is still time for management to approve a management proposal calling for 66-2/3% vote requirements.

Instead management is proposing to replace the current 80% vote requirements with 50.01% vote requirements. 50.01% vote requirements do not compare favorably with 66-2/3% vote requirements because 50.01% vote requirements have failed in the past and are likely to get fewer votes than a more moderate change to 66-2/3% vote requirements.

The 50.01% vote requirement is severely challenged to obtain the required vote of 80% of all shares outstanding. The highest vote in 2019 and 2020 for the management 50.01% proposal was 66% compared to the required 80% vote.

If management proposed a change to a more moderate 66-2/3% vote requirement the management proposal would have a better chance of being approved by shareholders instead of another lockstep failure.

Sincerely,

  
John Chevedden

cc: Patricia D. Horn

# JONES DAY

77 WEST WACKER • SUITE 3500 • CHICAGO, ILLINOIS 60601.1692  
TELEPHONE: +1.312.782.3939 • FACSIMILE: +1.312.782.8585

DIRECT NUMBER: (312) 269-4176  
RJJOSEPH@JONESDAY.COM

February 23, 2022

No-Action Request  
1934 Act/Rule 14a-8

**Via E-Mail (shareholderproposals@sec.gov)**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: OGE Energy Corp.  
Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

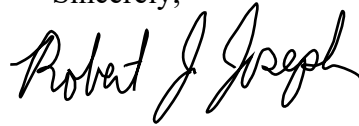
In a letter dated January 11, 2022 (the “No-Action Request”), we requested, on behalf of our client OGE Energy Corp., an Oklahoma corporation (the “Company”), that the staff of the Division of Corporation Finance (the “Staff”) not recommend any enforcement action to the Securities and Exchange Commission (the “Commission”) if, in reliance on the interpretation of Rule 14a-8 set forth in the No-Action Request, the Company excludes the Shareholder Proposal (the “Shareholder Proposal”) filed by shareholder John Chevedden (the “Proponent”) from its 2022 proxy statement and form of proxy relating to its Annual Meeting of Shareholders tentatively scheduled for May 19, 2022. In the No-Action Request, we explained that we believed the Shareholder Proposal could be properly omitted from the Company’s proxy materials pursuant to Rule 14a-8(i)(10) and/or Rule 14a-8(i)(9). As mentioned in the No-Action Request, at an upcoming meeting of the Board of Directors, the Board was going to consider approving, and recommending to the Company’s shareholders for approval at the 2022 Annual Meeting of Shareholders, a Company Proposal (as defined in the No-Action Request) that would eliminate the supermajority provisions in the Company’s certificate of incorporation that are the subject of the Shareholder Proposal.

The purpose of this letter is to notify the Staff that at the Company’s Board of Director’s meeting on February 23, 2022, the Board of Directors approved the Company Proposal and recommended that the Company’s shareholders approve the Company Proposal at the 2022 Annual Meeting of Shareholders. Accordingly, we respectfully request that the Staff not

U.S. Securities and Exchange Commission  
February 23, 2022  
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recommend any enforcement action from the Commission if the Company omits the Shareholder Proposal from its 2022 proxy materials. If the Staff disagrees with the Company's conclusion to omit the Shareholder Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. Notification and a copy of this letter are simultaneously being forwarded to the Proponent.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Joseph". The signature is written in a cursive, flowing style.

Robert J. Joseph

cc: John Chevedden  
Patricia D. Horn

JOHN CHEVEDDEN

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February 28, 2022

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 4 Rule 14a-8 Proposal**  
**OGE Energy Corp. (OGE)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 11, 2022 no-action request.

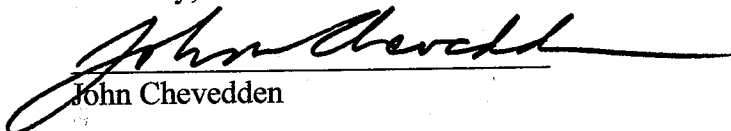
Staff Legal Bulletin No. 14H also would not be in favor of granting no action relief: “For example, if a company does not allow shareholder nominees to be included in the company’s proxy statement, a shareholder proposal that would permit a shareholder or group of shareholders holding at least 3% of the company’s outstanding stock for at least 3 years to nominate up to 20% of the directors would not be excludable if a management proposal would allow shareholders holding at least 5% of the company’s stock for at least 5 years to nominate for inclusion in the company’s proxy statement 10% of the directors. This is because both proposals generally seek a similar objective, to give shareholders the ability to include their nominees for director alongside management’s nominees in the proxy statement, and the proposals do not present shareholders with conflicting decisions such that a reasonable shareholder could not logically vote in favor of both proposals.”

*Whole Foods Market, Inc.* (January, 16, 2015) is a precedent that would not be in favor of granting no action relief.

A shareholder can vote for both the shareholder proposal calling for a new 66-2/3% voting requirement and for the management proposal calling for a new 50.01% voting requirement.

The management 50.01% proposal failed in 2019 and 2020. The rule 14a-8 proposal has a better chance of approval since it calls for a more conservative change. Plus the rule 14a-8 proposal has the potential to give management direction in obtaining approval of a binding proposal on this topic. This potential should not be killed in the crib.

Sincerely,

  
John Chevedden

cc: Patricia D. Horn



March 14, 2022

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 5 Rule 14a-8 Proposal**  
**OGE Energy Corp. (OGE)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 11, 2022 no-action request.

*Lantheus Holdings, Inc.* (March 11, 2022) is an example where a company took action after receiving a rule 14a-8 proposal and failed to obtain no action relief.

Management is in effect asking to be rewarded with a no action reprieve by responding in a dumb way to this rule 14a-8 proposal when there are smarter options.

Instead of punting for a 4th consecutive failure (by lockstep repeating the failures of 2016, 2019 and 2020) in using the same response to a rule 14a-8 proposal, management could have simply given notice of submitting to shareholders a proposal to replace its 80% supermajority vote provisions with 67% provisions.

A more moderate change would increase the likelihood of obtaining an approval vote from shareholders.

Or management could submit to shareholders a proposal that any change in its supermajority vote provisions would need 67% approval.

Management should not be rewarded for responding in a dumb lockstep way to a rule 14a-8 proposal when there are smarter options or innovative options.

Management has provided no precedent that upheld "to avoid the possibility of shareholders having to consider matters which already have been acted upon by management" when the proponent has pointed out how management could draft a *more favorable* management response proposal like a proposal to replace 80% supermajority vote provisions with 67% vote provisions.

Raytheon Technologies Corporation (RTX) had a similar problem with obtaining an 80% vote threshold and in 2022 committed to a 2-year process that is promising in accomplishing adoption according to the attached 2-pages from the February 28, 2022 RTX preliminary proxy:

<https://www.sec.gov/Archives/edgar/data/101829/000120677422000566/rtx3925001-pre14a.htm>

RTX acted in response to a 2022 rule 14a-8 proposal similar to the rule 14a-8 proposal submitted to OGE.

Sincerely,



John Chevedden

cc: Patricia D. Horn