

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

IIF US Holding 2 LP

Docket No. EC25-119

Motion to Answer and Answer of Public Citizen, Inc.

We submit this answer per 18 CFR § 385.213.

The Commission’s analysis under Section 203 of the Federal Power Act of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: the effect on competition; the effect on rates; and the effect on regulation,¹ and Congress instructs the Commission to only approve Section 203 transactions that are “consistent with the public interest”.² The application at issue here appears to adversely impact regulation.

FERC’s 2020 order authorizing IIF to acquire El Paso Electric determined that “Based on Applicants’ representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction.”³

On July 22, IIF requested permission for Rudolph Wynter to replace Christopher Ward as one of three IIF “owners”.⁴ The application omitted the fact that Mr. Wynter currently serves as an independent director of El Paso Electric.

We protested the application, questioning whether IIF and JP Morgan compromised the required independence of a designated independent board director seat of El Paso Electric when it negotiated his advancement to become an IIF “owner”. We queried whether compromising Mr. Wynter’s status as an independent director of El Paso Electric violated the terms and conditions of the Commission’s 2020 approval of IIF’s acquisition of El Paso Electric.

IIF dismissed our protest, characterizing El Paso Electric as a mere “private company” controlled by IIF, and that there is “no FERC requirement that Mr. Wynter remain independent, since EPE is already an affiliate of IIF.”⁵

¹ www.ferc.gov/sites/default/files/2020-04/rm96-6_o.pdf

² 16 USC § 824b(4).

³ At ¶ 58, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20200330-3054

⁴ https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20250722-5174

⁵ https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20251008-5095

But El Paso Electric is not some random “private company”—it is a franchised utility with hundreds of thousands of captive customers that the Commission’s Federal Power Act authorities bind the agency to protect. And as the attached affidavit of Stephen Fischmann, the former Chair of the New Mexico Public Regulation Commission attests, state regulators insisted that a majority of El Paso Electric’s board of directors remain independent from IIF and JP Morgan, and that major decisions at the utility – including the issuance of debt or equity—could only be made by the board, and not unilaterally by IIF or its manager JP Morgan. Mr. Fischmann testifies that it appears IIF’s movement of Mr. Wynter from a position that required his independence from IIF and JP Morgan to one where he now would serve as one of IIF’s owners may have interfered with the stipulation agreement requiring independence from IIF on El Paso Electric’s board of directors.

It therefore appears that the transaction proposed in this proceeding may negatively impact regulation, and therefore is contrary to the public interest. We ask that the Commission set the matter for hearing.

Respectfully submitted,

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Affidavit of Stephen Fischmann, on Behalf of Public Citizen, Inc.

1. My name is Stephen Fischmann, and I am the former Chair of the New Mexico Public Regulation Commission (PRC). I served on the commission from 2019-2022 and was part of the unanimous vote to approve IIF's acquisition of El Paso Electric (EPE) in 2020. The commission and intervenors paid close attention to ensuring EPE's management independence as part of that docket. Subsequent events have raised serious concerns about that independence and whether EPE has lost sight of its public obligations in pursuit of investor interests.
2. The Federal Energy Regulatory Commission has dealt with issues regarding control of IIF. In September 2023, it determined that JP Morgan is an affiliate of IIF and was in fact performing most of the functions that IIF was supposed to perform independently.⁶ Had that FERC determination that JP Morgan was affiliated with IIF been made prior to our New Mexico PRC consideration of its acquisition of EPE (instead of three years after the fact), it likely would have impacted the outcome of our review.
3. I submit this affidavit to urge FERC to carefully examine the issues raised by Public Citizen in this docket. One of the primary conditions upon which I negotiated as part of my vote in favor of IIF acquiring EPE was our insistence that certain members of the board of directors remain independent from IIF and JP Morgan. And we assigned critical roles for those independent directors, such as requiring the issuance of any EPE equity or debt could only be approved with a majority vote of EPE's board, including its directors that are independent from IIF and JP Morgan. The purpose of these provisions was to ensure the relative independence of EPE from IIF and JP Morgan.
4. It is concerning to me, as a former state regulator of EPE, that it appears JP Morgan and IIF may have interfered with the independence of EPE's board in the recruitment of that independent EPE board member for an IIF "owner" position. In my opinion, based upon the facts in this FERC record, shifting an EPE

⁶ 184 FERC ¶ 61,170, see beginning ¶ 66
https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20230921-3094

independent director to an IIF “owner” conflicts with the requirement that the EPE board member remain independent from JP Morgan and IIF.

5. Since being acquired by IIF, EPE has a history of erratic and less than forthright behavior at the PRC. Projects seldom come in on time. They have made a habit of coming back to the commission for revisions of approved agreements. They made efforts to invalidate public input and PRC oversight of Integrated Resource Plans, joined the Markets + real time market without prior notice to New Mexico Regulators and despite studies showing that joining CAISO would have resulted in far more savings for ratepayers. Now they have submitted an IRP that proposes operating with enough firm capacity to cover only 75-80% of peak demand from now through 2030.
6. EPE appears to have little regard for the public interest, and little interest in keeping promises or acting transparently. Given this record, we need to understand to what extent, if any, JP Morgan is driving events. Please investigate this situation.
7. This concludes my affidavit.

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Verification

I, Stephen Fischmann, pursuant to 28 USC § 1746, declare under penalty of perjury that the foregoing affidavit submitted on behalf of Public Citizen, Inc. is true and correct.
Executed on November 2, 2025.

/s/ Stephen Fischmann

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