UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

IIF US Holding LP, IIF US Holding 2 LP Docket No. EC20-94

**Protest of Public Citizen, Inc.**

 Public Citizen protests the August 31 Application. First, the new IIF “owner”—Anne M. Cleary—is not an owner in any typical sense, as none of the IIF “owners” actually contribute any capital. Instead, J.P. Morgan Chase & Co. designed the “owners” to serve as a figurehead board of directors in an effort to evade Bank Holding Company Act restrictions on JP Morgan’s control of energy assets.

 Second, the Application fails to include the relevant information required under Exhibits A, B, D and E for proposed new “owner” Anne M. Cleary, as required by 18 CFR § 33.2.

**About Public Citizen**

 Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We are active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located at our web site.[[1]](#footnote-1) We intervened in this docket on September 8.

**Public Citizen Protest**

J.P. Morgan Chase & Co. is a Bank Holding Company subject to regulation by the Federal Reserve. J.P. Morgan Chase & Co. created the IIF shell companies as off-the-books private equity entities in an effort to evade regulation by the Federal Reserve. J.P. Morgan Chase & Co submitted a *Notice to the Board of Governors of the Federal Reserve System* on July 21, 2005, where the bank stated that:

*JPM Chase commits to the Board that it will not acquire or operate facilities in the United States for the extraction, transportation, storage or distribution of commodities.[[2]](#footnote-2)*

One year after making this pledge to the Federal Reserve, J.P. Morgan Chase & Co. created a new lightly-regulated private equity arm of the bank’s asset management division, legally naming it *J.P. Morgan IIF*.[[3]](#footnote-3) J.P. Morgan had financial incentive to self-brand its new private equity arm, as selling securities to institutional investors is easier when the name on those securities is “J.P. Morgan”. J.P. Morgan retained its name on IIF’s securities sales through the first ten years of its existence.[[4]](#footnote-4) J.P. Morgan’s decision to remove its name from IIF by 2016 did not reflect any diminished management role for the bank, but rather acknowledged that J.P. Morgan had established IIF as an investment vehicle.

Seventy-nine percent of the equity invested by IIF’s limited partners is raised from foreign sources: 27% from the United Kingdom, 18% Europe (excluding the U.K.), 13% Canada, 8% Japan, 6% the Middle East, 4% Australia, 2% Asia (excluding Japan) and 1% “other”. Only 21% of IIF’s equity is from the United States.[[5]](#footnote-5)

J.P. Morgan’s control over IIF is deeper than just the legacy of naming rights—J.P. Morgan designed IIF’s weak corporate controls to maximize the bank’s ability to direct IIF’s operations and investments. To deflect regulator’s curiosity of upstream control by J.P. Morgan, the bank designed a false “ownership” structure consisting of three term-limited individuals who, in turn, delegate day-to-day authorities to J.P. Morgan Chase & Co. IIF has previously acknowledged that J.P. Morgan Chase & Co. can influence the selection of new “owners”.[[6]](#footnote-6)

 IIF earlier disclosed to the Commission that its “owners” do not actually contribute any money or capital:

*The ownership interests in IIF 2 GP held pro rata by each of the three IIF 2 GP Owners have an assigned nominal value of $10,000 per holder . . . An IIF 2 GP Owner at the end of his or her tenure is required to transfer, subject to required regulatory approvals, his or her ownership interest in IIF 2 GP to the replacement IIF 2 GP Owner.* [emphasis added]*[[7]](#footnote-7)*

 Note the careful wording: the value of $10,000 is “assigned” to the owners, and the $10,000 is “transferred” to new owners after the terms are up. This implies that the three “owners” are not even required to pony up the $10,000 themselves. Therefore Ms. Cleary is not an “owner”, but rather has been selected to serve as one of three caretaker members of a trustee board. That board, in turn, has delegated sweeping authorities to J.P. Morgan Chase & Co.

**The Commission Should Not Grant Waivers To File Exhibits A, B, D and E**

 The August 31 application asks for waivers to file the required exhibits A, B, D and E under 18 CFR § 33.2. Public Citizen opposes the waiver requests.

 The Application should be amended to include Exhibits A, B and D because the it fails to comprehensively document all of the energy-related affiliations of Anne M. Cleary, the proposed new “owner” of IIF:

* Anne M. Cleary shares affiliation with Mark Takahashi of PJM’s board of managers,[[8]](#footnote-8) as both are affiliated with Ascendant Group Ltd.[[9]](#footnote-9)
* Anne M. Cleary is a Principal with Modern Grid Solutions, which contracts with a number of electric utilities and RTOs/ISOs.[[10]](#footnote-10)
* Anne M. Cleary is a Senior Advisor with the Traffrail Group, which provides project management services for electric power clients.[[11]](#footnote-11)

The Commission should also require the application to be amended to include Exhibit E. Anne M. Cleary serves on the board of directors of the IIF company Southwest Generation, and it is unclear what role J.P. Morgan played in selected her for that board seat. There is also no information in the application about her compensation for serving on the board of Southwest Generation.[[12]](#footnote-12)

 As an aside, Anne M. Cleary was President of Mirant California during the 2000-01 west coast deregulation crisis. During her tenure, Mirant’s California and west coast operations were formally sanctioned by numerous government investigations for engaging in widespread illegal misconduct and market manipulation, with Mirant being forced to pay nearly $1.3 billion in fines and refunds:

* The California Attorney General reached a $750 million settlement with Mirant “to resolve allegations of price gouging and other unlawful conduct by Mirant during the California Energy Crisis of 2000-01.”[[13]](#footnote-13)
* FERC approved a settlement that required Mirant to pay half a billion dollars to refund aggrieved California parties, resolving allegations against the company for capacity withholding, market manipulation and other prohibited conduct.[[14]](#footnote-14)
* Mirant paid $11 million to the U.S. Department of Justice as part of a deferred prosecution agreement stemming from the company’s criminal violations of natural gas market manipulation during 2000 in California.[[15]](#footnote-15)
* The U.S. Commodity Futures Trading Commission ordered Mirant to pay a $12.5 million civil penalty for engaging in natural gas market manipulation and false reporting of the company’s west coast trading operations during the 2000-01 deregulation crisis.[[16]](#footnote-16)

Respectfully submitted,

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1. [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/) [↑](#footnote-ref-1)
2. At page 1440, [www.govinfo.gov/content/pkg/CHRG-113shrg91522/pdf/CHRG-113shrg91522.pdf](http://www.govinfo.gov/content/pkg/CHRG-113shrg91522/pdf/CHRG-113shrg91522.pdf) [↑](#footnote-ref-2)
3. www.sec.gov/Archives/edgar/vprr/0606/06064516.pdf [↑](#footnote-ref-3)
4. [www.sec.gov/Archives/edgar/data/1384002/000114036116050858/xslFormDX01/primary\_doc.xml](http://www.sec.gov/Archives/edgar/data/1384002/000114036116050858/xslFormDX01/primary_doc.xml) [↑](#footnote-ref-4)
5. U.S. Nuclear Regulatory Commission, July 26, 2020 *Response to the NRC Request for Additional Information*, at footnote 7. [↑](#footnote-ref-5)
6. See *Public Citizen Rehearing Request*, Docket No. EC19-120, April 29, 2020, at paragraph 14. [↑](#footnote-ref-6)
7. January 6, 2020 *Response to Deficiency Letter*, FERC Docket No. EC19-120, at pages 9-10. [↑](#footnote-ref-7)
8. www.pjm.com/about-pjm/who-we-are/pjm-board.aspx [↑](#footnote-ref-8)
9. https://ascendant.bm/about/ [↑](#footnote-ref-9)
10. http://moderngridsolutions.com/ [↑](#footnote-ref-10)
11. www.taffrailgroup.com/cleary [↑](#footnote-ref-11)
12. www.southwestgen.com/about-us/#board-section [↑](#footnote-ref-12)
13. https://oag.ca.gov/news/press-releases/attorney-general-lockyer-announces-7497-million-settlement-mirant-energy-price [↑](#footnote-ref-13)
14. 111 FERC ¶ 61,017. [↑](#footnote-ref-14)
15. www.justice.gov/archive/opa/pr/2007/July/07\_crm\_495.html [↑](#footnote-ref-15)
16. www.cftc.gov/sites/default/files/opa/enf04/opa5025-04.htm [↑](#footnote-ref-16)