UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Mankato Energy Center, LLC Docket No. EL21-36

Mankato Energy Center II, LLC

**Motion for Leave to Comment Out of Time and Comment of Public Citizen**

Per 18 CFR §§ 385.211 and 385.212, Public Citizen has good cause to comment out of time, as the Commission recently authorized IIF Int’l Holding―an entity under an investment advisory agreement with JP Morgan Chase―to acquire a FERC-jurisdictional facility while claiming it is affiliated with neither IIF US Holding nor JP Morgan Chase. The Commission must correct its error in two ways. First, this investigation under Section 206 of the Federal Power Act must include a determination of affiliation between IIF Int’l Holding L.P. and JP Morgan Chase. Second, the Commission must compel the public disclosure of two relevant documents: the investment advisory agreement between JP Morgan and IIF Int’l Holding, and the agreement of limited partnership of IIF Int’l Holding. Both documents must be made public, per 18 CFR § 388.112(e).

This proceeding was initiated by the Commission under Section 206 of the Federal Power Act to determine―per 18 CFR § 35.36(a)(9)(iii)―whether JP Morgan Chase is affiliated with IIF and its associated companies. IIF is a network of private equity shell companies created by JP Morgan Chase in 2006.

The non-public *Investment Advisory Agreement* between IIF US Holding and JP Morgan, in addition to IIF US Holding’s non-public *Agreement of Limited Partnership*, detail various rights and privileges enjoyed by JP Morgan Chase that demonstrate the bank’s affiliation with IIF, per 18 CFR § 35.36(a)(9)(iii).

On November 24, 2021 IIF Int’l Holding L.P. applied under Section 203 of the Federal Power Act to acquire 51% of a FERC-jurisdictional asset[[1]](#footnote-1). In that application, counsel for IIF Int’l Holding L.P. made the unsupported claim that “IIF Int’l and IIF US Holding 2 are not affiliates under the Commission’s regulations.”[[2]](#footnote-2)

The Commission’s notice of the November 24, 2021 application did not include the name IIF, as it unhelpfully listed only the name Innovative Solar 42, LLC. It was therefore unintuitive for intervenors such as Public Citizen to recognize any relationship between Innovate Solar and an open investigation under Section 206 of the Federal Power Act. Unsurprisingly, there were no intervenors.

But what *is* surprising is that the Commission issued an order on January 21, 2022 that neither questioned nor challenged the application’s unsubstantiated assertion that “IIF Int’l and IIF US Holding 2 are not affiliates.” One would hope that a federal regulator that initiated an investigation to determine affiliation between IIF and JP Morgan would attempt to verify the accuracy of a claim that “IIF Int’l and IIF US Holding 2 are not affiliates”, as such a claim is directly related to the 206 investigation. But the Commission did not.

The result of the Commission’s dereliction has been a cascading series of IIF filings in other proceedings waiving off Public Citizen challenges to the affiliation between IIF Int’l and JP Morgan.[[3]](#footnote-3)

This is the reality of the Commission’s review of otherwise routine filings: if a proceeding features no intervenors raising substantive issues, the Commission typically and uncritically regurgitates whatever narrative is proffered by applicants. Intervenors like Public Citizen therefore serve an essential role to assist the Commission in ensuring that the record is factual and accurate.[[4]](#footnote-4)

It is problematic that the Commission failed to recognize that an unopposed proceeding involving IIF Int’l had a direct impact on an open 206 investigation to determine affiliation between IIF and JP Morgan.

Furthermore, one of IIF Int’l Holding’s alleged “owners”, Henry Fayne, has long-standing affiliation with IIF US Holding.[[5]](#footnote-5) When IIF US Holding was acquiring El Paso Electric, Mr. Fayne was listed as the sole director of the merger sub in documents filed with the Texas Secretary of State. Mr. Fayne also served as director of two other entities controlled by IIF US Holding: Summit Utilities and Southwest Generation Operating Company. [[6]](#footnote-6) Mr. Fayne’s record serving as director for entities controlled by IIF US Holding makes the claim that his current role as an “owner” of the supposed unaffiliated IIF Int’l dubious.

The Commission has an obligation to correct the record by expanding its investigation to include a determination of affiliation between JP Morgan Chase and IIF Int’l. To this end, it is necessary for the Commission to compel IIF to provide both the investment advisory agreement between IIF Int’l and JP Morgan, and the agreement of limited partnership of IIF Int’l. Both of these documents must be publicly available, per 18 CFR § 388.112(e). Since IIF Int’l and IIF US Holding share the same counsel (which, of course they do, as they are affiliates), it should not be difficult for IIF to comply with such an order.

Respectfully submitted,

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1. FERC Docket No. EC22-23. [↑](#footnote-ref-1)
2. Application in Docket No. EC22-23, at page 8. [↑](#footnote-ref-2)
3. See FERC Docket Nos. EC22-60 and EC22-63. [↑](#footnote-ref-3)
4. Which may explain recent industry challenges to Public Citizen’s right to intervene. See Docket Nos. EC22-78 and OR22-3. [↑](#footnote-ref-4)
5. The other two “owners” of IIF Int’l are Vumindaba Dube and Michael Nagle. See FERC Docket No. EC22-23. [↑](#footnote-ref-5)
6. See November 6, 2019 *Answer of Public Citizen* in FERC Docket No. EC19-120. [↑](#footnote-ref-6)