UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

IIF US Holding 2 GP, LLC Docket No. EL20-64

**Protest of Public Citizen, Inc.**

Public Citizen protests the August 12 Petition for Declaratory Order of IIF US Holding 2 GP LLC. The Petition requests that various wholesale generators and local distribution companies owned by IIF be exempt from the Commission's holding company regulations.[[1]](#footnote-1) IIF justifies this request claiming that “the Novatus Holdcos and the Summit Holdcos are held as separate portfolios in Petitioner’s holding company system. Similarly, the Sun Jupiter Holdcos and EPE are in a separate chain of ownership under IIF US Holding 2 and managed separately from the other portfolios.”[[2]](#footnote-2) Public Citizen believes this statement to be false. The Commission should reject IIF’s petition, because the facts indicate that all of the IIF companies share common ownership, and are managed by J.P. Morgan Chase & Co. Furthermore, J.P. Morgan Chase & Co. executives serve on the Board of Directors of all of the IIF companies, including El Paso Electric, Summit, Novatus and Southwest Generation. J.P. Morgan Chase & Co. executives enjoy seamless operational and decision-making control over all of the IIF companies.

The Commission should not only dismiss IIF’s exemption request—classifying all IIF companies as part of the same holding company system—but must also consider in this proceeding whether J.P. Morgan Chase & Co. is affiliated with IIF US Holding 2 GP LLC. As part of that evaluation, the Commission should request certain articles of incorporation and management services agreements between IIF and J.P. Morgan Chase & Co.

**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.[[3]](#footnote-3) We intervened in this docket on August 19.

**The IIF Companies Have the Same Owners and Are Managed By J.P. Morgan Chase & Co.**

IIF controls four operating companies relevant to this docket and FERC jurisdiction:

* El Paso Electric Company is a franchised, vertically integrated utility with over 2,200 MW of generation capacity with MBR authority. El Paso Electric Company is controlled by the shell company IIF US Holding 2 GP, LLC. IIF US Holding 2 GP LLC has delegated day-to-day management to J.P. Morgan Chase & Co., and also positioned two J.P. Morgan executives on El Paso’s board of directors: Andrew “Landy” Gilbert and Kathleen Lawler.[[4]](#footnote-4)
* Novatus Energy, LLC is controlled by IIF US Holding 2 GP, LLC, and has nearly 1,000 MW of generation capacity with MBR authority. IIF US Holding 2 GP LLC delegates day-to-day management to J.P. Morgan Chase & Co, and J.P. Morgan’s Andrew Kapp serves on Novatus Energy’s board of directors.[[5]](#footnote-5)
* Southwest Generation Operating Company, LLC is controlled by IIF US Holding GP, LLC, with nearly 2,300 MW of generation with MBR authority. IIF US Holding GP LLC has delegated day-to-day management to J.P. Morgan Chase & Co, and J.P. Morgan’s Andrew Kapp serves on Southwest’s board of directors.[[6]](#footnote-6) Proposed new IIF “owner” Anne M. Cleary also serves on Southwest’s board.
* IIF US Holding 2 controls 100% of Summit Utilities, which operates local natural gas distribution companies in five U.S. states. J.P. Morgan’s Andrew “Landy” Gilbert serves on Summit’s board of directors.

The various IIF shell companies feature the same three owners: Rita J. Sallis, Christopher Ward and Dennis Clarke—with IIF proposing a transfer of Clarke’s “ownership” to Anne M. Cleary.[[7]](#footnote-7) Cleary is currently on the Board of Directors of the IIF company Southwest Generation.

Not only are the same three owners associated with all of the IIF shell companies, but the day-to-day management of all IIF companies has been delegated to J.P. Morgan Chase & Co. IIF has no employees independent from J.P. Morgan, as J.P. Morgan’s asset management division provides all of IIF’s operational needs.

J.P. Morgan’s management control over IIF extends to its holding companies, as J.P. Morgan executives have interlocking positions on the boards of all four of IIF’s energy holding companies. In one case, a single J.P. Morgan executive, Andrew “Landy” Gilbert, serves on the boards of both El Paso Electric and Summit Utilities, thereby undermining IIF’s exemption claim.

The companies that are the subject of IIF’s exemption request are all owned, controlled and managed by the same exact set of J.P. Morgan executives, which extends of the board of directors of all of the companies. As a result, the Commission must reject the exemption request and treat all of the IIF-owned companies as part of the same holding company structure.

**The Commission Must Determine J.P. Morgan Affiliation with IIF**

In determining whether to grant the exemption as requested by IIF, it is essential for the Commission to ascertain whether J.P. Morgan Chase & Co. is affiliated with IIF. The Commission has thus far declined to address this affiliation, noting in a recent Order that

*. . . while the Commission made no finding in the March 2020 Order as to whether J.P. Morgan Investment is an affiliate of Sun Jupiter, it is possible this issue could be considered in a future proceeding concerning El Paso’s, Sun Jupiter’s, or any affiliates’ thereof, authority to charge market-based rates.[[8]](#footnote-8)*

The Commission has authority to determine whether IIF and J.P. Morgan Chase & Co. are affiliates. 18 CFR § 35.36(a)(9)(iii) defines “Affiliate” to include:

*Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.*

J.P. Morgan Chase & Co. created IIF as an off-the-books private equity division one year after committing to the Federal Reserve that it would not “acquire or operate” power plants. J.P. Morgan submitted a *Notice to the Board of Governors of the Federal Reserve System* on July 21, 2005, where the bank explicitly pledged 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.[[9]](#footnote-9)*

One year after this assurance to the Federal Reserve Board of Governors, J.P. Morgan Chase & Co. created a new lightly-regulated private equity arm of the bank’s asset management division and legally called it *J.P. Morgan IIF*.[[10]](#footnote-10) J.P. Morgan had financial incentive to self-brand its new private equity arm, as selling securities to institutional investors is far 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.[[11]](#footnote-11) 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 successfully established IIF as an investment vehicle for institutional investors. IIF has delegated sweeping day-to-day authorities to J.P. Morgan.

IIF’s limited partners are overwhelmingly comprised of institutional investors outside the United States. Seventy-nine percent of IIF’s equity 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.[[12]](#footnote-12)

J.P. Morgan’s control over IIF is far 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 and manage all of 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 all day-to-day authorities to J.P. Morgan Chase & Co. IIF has previously acknowledged that J.P. Morgan Chase & Co. nominated current IIF “owners,” and can influence the selection of new “owners”.[[13]](#footnote-13)

As noted earlier, IIF’s delegation of day-to-day authorities to J.P. Morgan extends to ensuring that J.P. Morgan executives serve on all of the IIF-owned companies’ board of directors.

As part of a Commission determination of affiliation, an important variable is whether authorities granted by IIF to J.P. Morgan Chase & Co include the delegation of voting rights to J.P. Morgan. In order to make the affiliation determination, it is necessary for the Commission to compel the disclosure of all management services agreements, articles of incorporation, articles of organization, corporate bylaws, operating agreements, certificate of formation, corporate charters and shareholder agreements for the various IIF shell companies that are the subject of IIF’s petition for exemptive relief.

Respectfully submitted,

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1. Petition, at page 1. [↑](#footnote-ref-1)
2. Petition, at page 8. [↑](#footnote-ref-2)
3. [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/) [↑](#footnote-ref-3)
4. <https://ir.epelectric.com/news/news-details/2020/El-Paso-Electric-Announces-Closing-of-Acquisition-by-the-Infrastructure-Investments-Fund/default.aspx> [↑](#footnote-ref-4)
5. [www.novatusenergy.com/who-we-are/#directorsboard](http://www.novatusenergy.com/who-we-are/#directorsboard) [↑](#footnote-ref-5)
6. [www.southwestgen.com/about-us/#board-section](http://www.southwestgen.com/about-us/#board-section) [↑](#footnote-ref-6)
7. See FERC Docket No. EC20-94. [↑](#footnote-ref-7)
8. 172 FERC ¶ 61,083, *Order Accepting Proposed Mitigation And Addressing Arguments Raised on Rehearing*, Docket EC19-120, Issued July 22, 2020, at Footnote 21. [↑](#footnote-ref-8)
9. 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-9)
10. www.sec.gov/Archives/edgar/vprr/0606/06064516.pdf [↑](#footnote-ref-10)
11. [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-11)
12. U.S. Nuclear Regulatory Commission, July 26, 2020 *Response to the NRC Request for Additional Information*, at footnote 7. [↑](#footnote-ref-12)
13. See *Public Citizen Rehearing Request*, Docket No. EC19-120, April 29, 2020, at paragraph 14. [↑](#footnote-ref-13)